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A GUIDE

TO THE

NEW PROPERTY STATUTES

BEING THE

LAW OF PROPERTY ACT, 1922; LAW OF PROPERTY (AMENDMENT) ACT, 1924; LAW OF PROPERTY ACT, 1925;

AND THE

SETTLED LAND, TRUSTEE, ADMINISTRATION OF ESTATES, LAND CHARGES, LAND REGISTRATION, and UNIVERSITIES AND COLLEGE ESTATES ACTS, 1925.

BY

THE EDITORS OF "LAW NOTES."

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PREFACE.

It is quite in keeping with the character of the legislation of which this book treats that we have been unable to find a satisfactory title. The book is really a second edition, rewritten and greatly enlarged, of The Guide to the Law of Property Act, 1922, which we published in November, 1922. But we cannot call it by that title, for the greater part of the Act of 1922 has been repealed and will never come into force. The original intention of Parliament was to bring the Act into operation on the 1st January last, but by an Act passed just before last Christmas its commencement was postponed for a year, and by another Act passed at the same time several amendments were made in the Act of 1922 and the way prepared for consolidation of the statutory law on the subjects with which it dealt. The consolidating Bills were introduced in February and received the Royal Assent on the Thursday before Easter, and are to come into force on the 1st January, 1926. Between them they contain all the provisions of the Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924, except those relating to the enfranchisement of copyholds, the extinguishment of manorial incidents, the conversion of perpetually re-

newable leaseholds into long terms of years, and one sub-section relating to glebe land. In addition, the consolidating Acts incorporate numerous other statutes, such as the Conveyancing Acts, 1881 to 1911, the Settled Land Acts, 1882 to 1890, and the Trustee Act, 1893.

The result is that there will come into force on the first day of January next the following Acts:—

Certain parts of the Law of Property Act, 1922;
Certain parts of the Law of Property (Amendment) Act, 1924;
The Law of Property Act, 1925;
The Settled Land Act, 1925;
The Trustee Act, 1925;
The Administration of Estates Act, 1925;
The Land Charges Act, 1925;
The Land Registration Act, 1925; and
The Universities and College Estates Act, 1925.

It is of these Acts that this book treats, and it is these Acts which, for want of a better title, we have designated "The New Property Statutes." How to deal with them has been a difficult question to decide. The King's Printer's copies alone cover well over 600 pages—more than double the original Act of 1922. To set out the Acts *in extenso* with an explanatory introduction and full notes to each section would require not one volume, but at least two. After very careful consideration we came to the conclusion that parts of the Acts must be omitted. Fortunately, the additional matter introduced by the Consolidation Acts consists

largely of old law with which the legal profession is already familiar, and by omitting or referring only briefly to this it has been possible to keep the book within manageable proportions, without, we hope, seriously detracting from its usefulness. While, however, omitting sections which merely reproduce without alteration sections of older statutes, such as the Conveyancing and Trustee Acts, we have added a table of repealed Acts from which the practitioner will be able to discover in which of the new Acts, and in which section of that Act, any particular provision to which he wishes to refer is to be found.

The form in which the new law is now presented to the legal profession is certainly an improvement on the original Act of 1922 with its unwieldy Schedules. And something has been done by the amending Act of 1924 to make it more intelligible. For instance, sect. 3 of the Act of 1922, which dealt with the question whether a purchaser is affected by equitable interests, has been entirely re-drafted, and sect. 2 of the Law of Property Act, 1925, which takes its place, is comparatively simple. The former section, as we explained at length in our book on the Act of 1922, was almost unintelligible, especially as the Act contained no provision making registration of a charge equivalent to actual notice, nor any declaration that a charge, not registered when it ought to be registered, should be void against a purchaser even with actual notice of it. Both provisions are to be found in the Act of 1925. Now, however, that the

section is intelligible, its effect is seen to be comparatively slight. Robbed of its mystery, the so-called "curtain" provision appears to be rather an impostor. So many equitable interests, even apart from the Acts, do not affect purchasers, and so many more are after this year to be registered under the Land Charges Act, and, if registered, will bind a purchaser even without notice, that it would be more accurate to say that what the Acts really do is to compel equitable interests to come out into the open rather than to "curtain" them behind the legal estate.

The plan which we have adopted in the following pages has been to give first a general introduction to the Acts, classifying the alterations in the law under fourteen main heads. The last of these is, we fear, rather like Lord Macnaghten's fourth head of charitable trusts, consisting, as it does, of numerous unconnected alterations in existing statutes. But the miscellaneous changes are so many and varied that it has been impossible to classify them otherwise than by arranging them alphabetically under one vague general head. The alphabetical arrangement will, it is hoped, enable the practitioner or the student to see at a glance whether any particular matter has been affected by the Acts. After the Introduction, the Law of Property Act, 1925, Settled Land Act, 1925, Trustee Act, 1925, Administration of Estates Act, 1925, and Land Charges Act, 1925, have been dealt with section by section, though, as already mentioned, sections which simply incorporate

existing statutory provisions unaltered have been either omitted or merely noticed *en passant*. Of the other Acts a short summary has been given.

It is hardly necessary to add that this book does not profess to be an exhaustive treatise on the Acts: that fact is sufficiently obvious from its size. What we have aimed at has been to give an accurate account of the chief changes in the law effected by the Acts in as small a compass and as accessible a form as possible.

EDITORS OF "LAW NOTES."

April 20th, 1925.

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LIST OF ABBREVIATIONS.

A. E. A. ..... = Administration of Estates Act, 1925.
C. A. 1881 ..... = Conveyancing Act, 1881.
C. A. 1882 ..... = Conveyancing Act, 1882.
C. A. 1892 ..... = Conveyancing Act, 1892.
C. A. 1911 ..... = Conveyancing Act, 1911.
L. C. A. ..... = Land Charges Act, 1925.
L. P. A. ..... = Law of Property Act, 1925.
L. P. A. 1922 ..... = Law of Property Act, 1922.
L. P. A. 1924 ..... = Law of Property (Amendment) Act, 1924.
L. P. A. A. 1859 ... = Law of Property Amendment Act, 1859.
L. P. A. A. 1860 ... = Law of Property Amendment Act, 1860.
L. R. A. ..... = Land Registration Act, 1925.
L. T. A. 1875 ..... = Land Transfer Act, 1875.
L. T. A. 1897 ..... = Land Transfer Act, 1897.
M. W. P. A. 1907 ... = Married Women's Property Act, 1907.
R. P. A. 1845 ..... = Real Property Act, 1845.
S. L. A. ..... = Settled Land Act, 1925.
S. L. A. 1882 to 1890 . = Settled Land Acts, 1882 to 1890.
T. A. ..... = Trustee Act, 1925.
T. A. 1893 ..... = Trustee Act, 1893.
T. A. 1894 ..... = Trustee Act, 1893, Amendment Act, 1894.
V. & P. A. 1874 .... = Vendor and Purchaser Act, 1874.
U. & C. E. A. ..... = Universities and College Estates Act, 1925.

TABLE OF REPEALED ACTS.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
13 Edw. 1 (*Stat. Westm. Sec.*), c. 19.	The Ordinary chargeable to pay the debts of an intestate.	A. E. A. ss. 9 and 32.
13 Edw. 1 (*Stat. Westm. Sec.*), c. 23.	Writ of accompt for executors.	A. E. A. s. 26.
13 Edw. 1 (*Stat. Westm. Sec.*), c. 34. [Repealed from "and if a wife willingly leave her husband" to "in which case she shall be restored to her action."]	Dower forfeited by elopement with adulterer.	Not re-enacted.
25 Edw. 1, c. 7.....	Widow: her marriage estate; quarantine; estovers; dower; re-marriage.	Not re-enacted
25 Edw. 1, c. 18 ..... [Repealed from "and the residue" to "reasonable parts."]	The King's tenant, his debtor.	Not re-enacted.
Statute (*temp. incert.*)	Statute concerning tenants by the curtesy of England.	Not re-enacted.
Statute Prerogativa Regis (*temp. incert.*) c. 18. [Repealed from "Nevertheless it is used" to the end of the chapter.]	Customs of Gloucester and Kent.	Not re-enacted.
4 Edw. 3, c. 7	Executors shall have an action of trespass for a wrong done to their testator.	A. E. A. s. 26.
25 Edw. 3, st. 5, c. 5	Executors of executors shall have the same rights and duties as the first executors.	A. E. A. s. 7.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
31 Edw. 3, st. 1, c. 11	The Ordinary shall commit administration upon an intestacy. The administrators shall have the same rights and charges as executors.	A. E. A. ss. 10, 21, 26 and 32.
21 Hen. 8, c. 4	An Acte concninge Executors of Laste Willes and Testaments.	Not re-enacted.
21 Hen. 8, c. 5	An Acte concninge Fynes and Sõmes of Moneye to be taken by the Ministers of Busshops and other Ordinaries of Holye Churche for the pbate of Testam^{ts}.	A. E. A. ss. 4, 10 and 25.
27 Hen. 8, c. 10	The Statute of Uses.	Not re-enacted.
27 Hen. 8, c. 16	An Acte concnyng enrolmentes of bargaines & contractes of Landes & Tenementes.	Not re-enacted.
31 Hen. 8, c. 1	An Acte for joynt Ten^{a}nts & Ten^{a}nts in comon.	Not re-enacted.
32 Hen. 8, c. 28	An Acte that Lesez may enjoy their fermes.	Not re-enacted.
32 Hen. 8, c. 32	Joinctenaunts for lif or yeres.	Not re-enacted.
32 Hen. 8, c. 34	Graunties of reversions....	L. P. A. s. 142.
32 Hen. 8, c. 37, ss. 1, 2 and 3.	For recoving of Arrearags by Executors and Administrators.	A. E. A. s. 26.
34 & 35 Hen. 8, c. 20.....	An Acte to embarre fayned recoveries of Landes wherein the Kinges Majestie is in rever on.	Not re-enacted.
1 Edw. 6, c. 12, s. 16.....	An Acte for the repeale of certaine Statutes concerninge treasons, felonyes, &c.	Not re-enacted.
5 & 6 Edw. 6, c. 11, s. 11 ..	An Acte for the punyshment of divse treasons.	Not re-enacted.
5 & 6 Edw. 6, c. 12, s. 2 ..	An Acte for the declaracon of a Statute made for the marriage of Priests and for the legittimacon of their children.	Not re-enacted.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
5 Eliz. c. 26	An Acte for thenrollemt of Indentures of Bargayne and Sale in the Quenes Mates Courtes.	Not re-enacted.
13 Eliz. c. 4	An Acte to make the Landes Tene tes Goodes and Cattalles of Tellers Receavers, etc., lyable to the payment of their Debtes.	Not re-enacted.
13 Eliz. c. 5	An Acte against fraudulent deedes, giftes, alienations, &c.	L. P. A. s. 172.
18 Eliz. c. 6	An Act for maintenance of the Colleges in the Universities, and of Winchester and Eaton.	Not re-enacted.
27 Eliz. c. 3	An Act for the explanacion of the Statute made Anno xiij of the Queenes Majesties Reigne intituled, An Act to make the Landes Tenementes Goodes and Chattels of Tellors Receivors, etc., liable to the paiment of their Debtes.	Not re-enacted.
27 Eliz. c. 4	An Act against covenous and fraudulent conveyances.	L. P. A. s. 173.
43 Eliz. c. 8	An Acte against fraudulent administracon of intestates Goodes.	A. E. A. s. 28.
12 Chas. 2, c. 24, s. 7, from "tenures in frank almoigne" to "nor to take away."	An Acte taking away the Court of Wards & Liveries and Tenures in Capite and by Knights Service and Purveyance and for settling a Revenue upon His Majesty in lieu thereof.	Not re-enacted.
22 & 23 Chas. 2, c. 10.....	The Statute of Distributions.	Sect. 1..A. E. A. s. 21. Sect. 5..A. E. A. s. 44. Sect. 6..A. E. A. s. 19.
29 Chas. 2, c. 3, ss. 1, 2, 3, 4 (the words "or upon any "contract or sale of lands, "tenements and hereditaments or any interest in "or concerning them"), 7, 8, 9, 10, 11, 23 and 24.	The Statute of Frauds	Sects. 1 & 2..L. P. A. s. 54. Sect. 3..L. P. A. s. 53. Sect. 4..L. P. A. s. 40. Sects. 7, 8 & 9..L. P. A. s. 53. Sects. 10 & 11..A. E. A. s. 32.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
30 Chas. 2, c. 7	An Act to enable creditors to recover their debts of the executors and administrators of executors in their own wrong.	A. E. A. s. 29.
1 Jac. 2, c. 17	An Act for reviving and continuance of severall Acts of Parlyement therein mentioned.	Sect. 6..A. E. A. s. 21..
4 Will. & Mary, c. 16.....	An Act to prevent frauds by clandestine mortgages.	Not re-enacted.
4 Will. & Mary, c. 24, s. 12.	An Act for reviving, cotinuing and explaining several laws therein mentioned that are expired and neare expiring.	A. E. A. s. 29.
10 Will. 3, c. 22	An Act to enable Posthumus Children to take Estates as if born in their Fathers Life time.	Not re-enacted.
4 & 5 Anne, c. 3, ss. 9, 10, 21 and 27.	An Act for the amendment of the law and the better Advancement of Justice.	Sects. 9 & 10..L. P. A. s. 151. Sects. 21 & 27 .. Not re-enacted.
10 Anne, c. 28	The Pleading Act, 1711 ...	Not re-enacted.
13 Anne, c. 6	The Mortuaries (Bangor, etc.) Abolition Act, 1713.	Not re-enacted.
4 Geo. 2, c. 28, s. 6.....	The Landlord and Tenant Act, 1730.	L. P. A. s. 150.
11 Geo. 2, c. 19, s. 11.....	The Distress for Rent Act, 1737.	L. P. A. s. 151.
25 Geo. 2, c. 39	The British Subjects Act, 1751.	Not re-enacted.
38 Geo. 3, c. 87	The Administration of Estates Act, 1798.	A. E. A. ss. 18, 20, 21 & 57..
39 & 40 Geo. 3, c. 98	The Accumulations Act, 1800.	L. P. A. s. 164.
11 Geo. 4 & 1 Will. 4, c. 40.	The Executors Act, 1830 ..	A. E. A. ss. 46, 49.
11 Geo. 4 & 1 Will. 4, c. 46.	The Illusory Appointments Act, 1830.	L. P. A. s. 158.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
11 Geo. 4 & 1 Will. 4, c. 47.	The Debts Recovery Act, 1830.	A. E. A. ss. 32, 38.
11 Geo. 4 & 1 Will. 4, c. 65.	The Infants' Property Act, 1830.	Not re-enacted.
3 & 4 Will. 4, c. 27, s. 41 ..	The Real Property Limitation Act, 1833.	Not re-enacted.
3 & 4 Will. 4, c. 42, ss. 2, 37 and 38.	The Civil Procedure Act, 1833.	A. E. A. s. 26.
3 & 4 Will. 4, c. 74, ss. 2 to 14, 16, 18, 27 (the words "no woman in respect of "her dower and"), 29 to 31, 32 (as respects settlements made or coming into operation after 1925), 41, 46, 50 to 54, 58 (from "and in regard to the enrolment" to "shall be effected"), 59, 66; in sect. 71 the words "and "shall in the case of lands "to be sold as aforesaid "being held by copy of "court roll" to "copy- "hold, and were actually "purchased and settled," from the words "which "shall have no operation "under this Act" to "after the execution "thereof," the words "and completed by en- "rolment" and the words "not held by copy of "court roll," sects. 73, 74, 76; in sect. 77 the words from "save and "except that no such "disposition" to the end of that section, sects. 79 to 90, and in sect. 91 the words "or of making a "surrender of lands held "by copy of court roll."	The Fines and Recoveries Act, 1833.	Not re-enacted.
3 & 4 Will. 4, c. 104	The Administration of Estates Act, 1833.	A. E. A. s. 32.
3 & 4 Will. 4, c. 105	The Dower Act, 1833	Not re-enacted.
1 & 2 Vict. c. 110, s. 13....	The Judgments Act, 1838..	L. P. A. s. 195.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
2 & 3 Vict. c. 11, ss. 4, 7, 10 and 11.	The Judgments Act, 1839..	Sects. 4 & 7..L. C. A. ss. 2 & 3.
2 & 3 Vict. c. 60	The Debts Recovery Act, 1839.	A. E. A. s. 38.
8 & 9 Vict. c. 106, ss. 2 to 9.	The Real Property Act, 1845.	Sects. 2 & 3..L. P. A. ss. 51, 52. Sect. 4..L. P. A. s. 59. Sect. 5..L. P. A. s. 56. Sect. 6..L. P. A. s. 4. Sect. 7..L. P. A. s. 168. Sect. 8..Not re-enacted. Sect. 9..L. P. A. s. 139.
8 & 9 Vict. c. 112	The Satisfied Terms Act, 1845.	L. P. A. s. 5.
11 & 12 Vict. c. 87	The Debts Recovery Act, 1848.	A. E. A. s. 38.
12 & 13 Vict. c. 26	The Leases Act, 1849	L. P. A. s. 152.
12 & 13 Vict. c. 110	An Act suspending the Leases Act, 1849, till 1st June, 1850.	Not re-enacted.
13 & 14 Vict. c. 17	The Leases Act, 1850	L. P. A. s. 152.
13 & 14 Vict. c. 43, s. 24 ..	The Court of Chancery of Lancaster Act, 1850.	Not re-enacted. [*See* L. C. A. ss. 6, 7 and 20.]
15 & 16 Vict. c. 76, s. 209..	The Common Law Procedure Act, 1852.	L. P. A. s. 145.
17 & 18 Vict. c. 97 ..... [Proviso to sect. 11, and, in sect. 13, the words "so "far as the same has been "apportioned upon the "lands of persons inte- "rested and making appli- "cations as aforesaid."]	The Inclosure Act, 1854 ..	Not re-enacted. [*See* sect. 192 of L. P. A.]
17 & 18 Vict. c. 113	The Real Estate Charges Act, 1854.	A. E. A. s. 35.
18 & 19 Vict. c. 15, ss. 3, 11 (the words "nor shall "any such judgment, "decree, order or rule, or "the money thereby "secured, be a charge "upon such lands, tene- "ments or hereditaments "so vested in purchasers or "mortgagees"), 12 to 14.	The Judgments Act, 1855..	Sect. 11..L. P. A. s. 195. Sects. 12 & 13..L. C. A. ss. 4, 5 & 16. Sect. 14..L. C. A. s. 4.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
20 & 21 Vict. c. 57 ..... In sect. 1 the words "nor unless the deed be "acknowledged by her as "hereinafter directed," and sect. 2.	The Married Women's Reversionary Interests Act, 1857.	Not re-enacted.
20 & 21 Vict. c. 77, ss. 70 to 83.	The Court of Probate Act, 1857.	Sects. 70, 71, 72..A. E. A. s. 16. Sect. 73..A. E. A. s. 10. Sect. 74..A. E. A. s. 18. Sect. 75..A. E. A. s. 15. Sect. 76..A. E. A. s. 17. Sects. 77 & 78..A. E. A. s. 27. Sect. 79..A. E. A. s. 5. Sects. 81 to 83..A. E. A. s. 11.
21 & 22 Vict. c. 44	The Universities and Colleges Estates Act, 1858.	U. & C. E. A.
21 & 22 Vict. c. 95, ss. 16, 18, 19, 21 and 22.	The Court of Probate Act, 1858.	Sect. 16..A. E. A. ss. 5 & 7. Sect. 18..A. E. A. s. 18. Sect. 19..A. E. A. s. 9. Sect. 22..A. E. A. s. 16.
22 & 23 Vict. c. 35, ss. 1 to 3, 10 to 18, 21 to 24, 27 to 29.	The Law of Property Amendment Act, 1859.	Sects. 1 & 2..L. P. A. s. 143. Sect. 3..L. P. A. s. 140. Sect. 10..L. P. A. s. 70. Sect. 11..L. P. A. s. 71. Sect. 12..L. P. A. s. 159. Sect. 13..S. L. A. s. 49. Sects. 14 to 16..A. E. A. s. 38. Sect. 17..A. E. A. s. 39. Sect. 18..A. E. A. s. 38. Sect. 21..L. P. A. s. 72. Sect. 22..L. C. A. s. 25. Sect. 23..T. A. s. 14. Sect. 24..L. P. A. s. 183. Sects. 27 & 28..T. A. s. 26. Sect. 29..T. A. s. 27.
23 & 24 Vict. c. 38, ss. 6 & 8.	The Law of Property Amendment Act, 1860.	Sect. 6..L. P. A. s. 148. Sect. 8..L. P. A. s. 183.
23 & 24 Vict. c. 59	The Universities and College Estates Extension Act, 1860.	U. & C. E. A.
23 & 24 Vict. c. 115, s. 2 ..	The Crown Debts and Judgments Act, 1860.	L. C. A. ss. 2, 4 & 6.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
23 & 24 Vict. c. 127 ..... In sect. 30 the words from "and every appointment" to "married women under that Act" and the words "or appointment" wherever they occur, and in sect. 31 the words from "and the officer of the Court of Common Pleas" to "for taking the said acknowledgments" and the words "and appointments" wherever they occur.	The Solicitors Act, 1860 ..	Not re-enacted.
30 & 31 Vict. c. 47, s. 2	The Lis Pendens Act, 1867.	L. C. A. s. 2.
30 & 31 Vict. c. 69	The Real Estate Charges Act, 1867.	A. E. A. s. 35.
31 & 32 Vict. c. 4	The Sales of Reversions Act, 1867.	L. P. A. s. 174.
31 & 32 Vict. c. 40	The Partition Act, 1868 ...	Not re-enacted.
32 & 33 Vict. c. 46	The Administration of Estates Act, 1869.	A. E. A. ss. 32 & 34, and 1st Schedule.
34 & 35 Vict. c. 31, s. 7 (the words "not exceeding one acre").	The Trade Union Act, 1871.	Not re-enacted.
36 & 37 Vict. c. 66, s. 25, sub-ss. (3) to (7).	The Supreme Court of Judicature Act, 1873.	Sect. 25 (3)..L. P. A. s. 135. (4)..L. P. A. s. 185. (5)..L. P. A. s. 98. (6)..L P. A. s. 136. (7)..L. P. A. s. 41.
37 & 38 Vict. c. 37	The Powers of Appointment Act, 1874.	L. P. A. s. 158.
37 & 38 Vict. c. 78	The Vendor and Purchaser Act, 1874.	Sect. 1..L. P. A. s. 44. Sect. 2..L. P. A. ss. 44, 45. Sect. 9..L. P. A. s. 49.
38 & 39 Vict. c. 77, s. 10 ..	The Supreme Court of Judicature Act, 1875.	A. E. A. s. 34, and 1st Schedule.
38 & 39 Vict. c. 87	The Land Transfer Act, 1875.	L. R. A.
39 & 40 Vict. c. 17	The Partition Act, 1876 ...	Not re-enacted.

Session and Chapter, and how far Repealed, Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
40 & 41 Vict. c. 18	The Settled Estates Act, 1877.	Not re-enacted.
40 & 41 Vict. c. 33	The Contingent Remainders Act, 1877.	Not re-enacted.
40 & 41 Vict. c. 34	The Real Estate Charges Act, 1877.	A. E. A. s. 35.
42 & 43 Vict. c. 78 ..... In Schedule I. the words "Registrar of Certificates "of acknowledgments "of deeds by married "women."	The Supreme Court of Judicature (Officers) Act, 1879.	Not re-enacted.
43 & & 44 Vict. c. 4	The Universities and College Estates Amendment Act, 1880.	U. & C. E. A.
44 & 45 Vict. c. 41 ..... The whole Act except sect. 30, so far as it relates to deaths before 1926, and sects. 42 and 43, so far as they relate to instruments coming into operation before 1926, and sect. 48, which relates to filing powers of attorney.	The Conveyancing Act, 1881.	Sect. 2..L. P. A. s. 205. Sect. 3..L. P. A. ss. 44, 45. Sect. 5..L. P. A. s. 50. Sect. 6..L. P. A. s. 62. Sect. 7..L. P. A. s. 76, and 2nd Schedule. Sect. 8..L. P. A. s. 75. Sect. 9..L. P. A. s. 64. Sect. 10..L. P. A. s. 141. Sect. 11..L. P. A. s. 142. Sect. 12..L. P. A. s. 140. Sect. 13..L. P. A. s. 44. Sect. 14..L. P. A. s. 146. Sect. 15..L. P. A. s. 95. Sect. 16..L P. A. s. 96. Sect. 17..L. P. A. s. 93. Sect. 18..L. P. A. s. 99. Sect. 19..L. P. A. s. 101. Sect. 20..L. P. A. s. 103. Sect. 21..L. P. A. ss. 104, 105, 106. Sect. 22..L. P. A. s. 107. Sect. 23..L. P. A. s. 108. Sect. 24..L. P. A. s. 109. Sect. 25..L. P. A. s. 91. Sect. 26..L. P. A. s. 117. Sect. 27..L. P. A. s. 118. Sect. 28..L. P. A. s. 119. Sect. 29..L. P. A. s. 120. Sect. 30..A. E. A. ss. 1 to 3. Sect. 40..L. P. A. s. 129. Sect. 42 S. L. A. s. 102; T. A. s. 31. Sect. 43..T. A. s. 31.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
44 & 45 Vict. c. 41—*contd.*...	The Conveyancing Act, 1881.	Sect. 44..L. P. A. s. 121. Sect. 45..L. P. A. s. 191. Sect. 46..L. P. A. s. 123. Sect. 47..L. P. A. s. 124. Sect. 48..Not repealed. Sect. 49..L. P. A. s. 51. Sect. 50..L. P. A. s. 72. Sect. 51..L. P. A. s. 60. Sect. 52..L. P. A. ss. 155, 160. Sect. 53..L. P. A. s. 58. Sect. 54..L. P. A. s. 67. Sect. 55..L. P. A. s. 68. Sect. 56..L. P. A. s. 69. Sect. 57..L. P. A. s. 206. Sect. 58..L. P. A. s. 78. Sect. 59..L. P. A. s. 80. Sect. 60..L. P. A. s. 81. Sect. 61..L. P. A. s. 111. Sect. 63..L. P. A. s. 63. Sect. 64..L. P. A. s. 83. Sect. 65..L. P. A. s. 153. Sect. 66..L. P. A. s. 182. Sect. 67..L. P. A. s. 196. Sect. 69..L. P. A. s. 203. Sect. 70..L. P. A. s. 204. Sched. III...L. P. A. 4th Schedule. Sched. IV...L. P. A. 5th Schedule.
44 & 45 Vict. c. 68, s. 26 ...	The Supreme Court of Judicature Act, 1881.	Not re-enacted.
45 & 46 Vict. c. 38	The Settled Land Act, 1882.	Sect. 2..S. L. A. ss. 1, 2, 19, 30, 117. Sect. 3..S. L. A. s. 38. Sect. 4..S. L. A. ss. 39, 40, 62 Sect. 5..S. L. A. s. 69. Sect. 6..S. L. A. s. 41. Sect. 7..S. L. A. s. 42. Sect. 8..S. L. A. s. 44. Sect. 9..S. L. A. s. 45. Sect. 10..S. L. A. s. 46. Sect. 11..S. L. A. s. 47. Sect. 12..S. L. A. s. 43. Sect. 13..S. L. A. s. 52. Sect. 16..S. L. A. s. 56. Sect. 17..S. L. A. s. 50. Sect. 18..S. L. A. s. 71. Sect. 20..S. L. A. s. 72. Sect. 21..S. L. A. s. 73. Sect. 22..S. L. A. s. 75; T. A. s. 3. Sect. 23..S. L. A. s. 73.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
45 & 46 Vict. c. 38—*contd.*...	The Settled Land Act, 1882.	Sect. 24..S. L. A. s. 82. Sect. 25..S. L. A. s. 83, and 3rd Schedule. Sect. 27..S. L. A. s. 86. Sect. 28..S. L. A. s. 88. Sect 29..S. L. A. s. 89. Sect. 30..Left outstanding. Sect. 31..S. L. A. s. 90. Sect. 32..S. L. A. s. 76. Sect. 33..S. L. A. s. 77. Sect. 34..S. L. A. s. 79. Sect. 35..S. L. A. s. 66. Sect. 36..S. L. A. s. 92. Sect. 37..S. L. A. s. 67. Sect. 38..S. L. A. s. 34. Sect. 39..S. L. A. s. 94. Sect. 40..S. L. A. s. 95. Sect. 41..S. L. A. s. 96. Sect. 42..S. L. A. s. 97. Sect. 43..S. L. A. s. 100. Sect. 44..S. L. A. s. 93. Sect. 45..S. L. A. s. 101. Sect. 46..S. L. A. s. 113. Sect. 47..S. L. A. s. 114. Sect. 48..S. L. A. s. 115. Sect. 49..S. L. A. s. 116. Sect. 50..S. L. A. s. 104. Sects. 51, 52..S. L. A. s. 106. Sect. 53..S. L. A. s. 107. Sect. 54..S. L. A. s. 110. Sect. 55..S. L. A. s. 112. Sect. 56..S. L. A. s. 108. Sect. 57..S. L. A. s. 109. Sect. 58..S. L. A. s. 20. Sects. 59 & 60..S. L. A. s. 26. Sect. 61..S. L. A. s. 25. Sect. 62..S. L. A. s. 28.
45 & 46 Vict. c. 39	The Conveyancing Act, 1882.	Sect. 1..L. P. A. s. 205. Sect. 2..L. C. A. s. 17. Sect. 3..L. P. A. s. 199. Sect. 4..L. P. A. s. 44. Sect. 6..L. P. A. ss. 156, 160. Sect 7..L. P. A. s. 167. Sect. 8..L. P. A. s. 126. Sect. 9..L. P. A. s. 127. Sect. 10..L. P. A. s. 134. Sect. 11..L. P. A. s. 153. Sect. 12..L. P. A. s. 95.
47 & 48 Vict. c. 18	The Settled Land Act, 1884.	Sect. 4..S. L. A. s. 42. Sect. 5..S. L. A. s. 101. Sect. 8..S. L. A. s. 20.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
47 & 48 Vict. c. 71	The Intestates' Estates Act, 1884.	A. E. A. ss. 30 & 55 (xxiv).
48 & 49 Vict. c. 25, s. 23 (3).	The East India Unclaimed Stock Act, 1885.	Not re-enacted.
50 & 51 Vict. c. 30	The Settled Land Acts (Amendment) Act, 1887.	S. L. A. ss. 73, 88.
51 & 52 Vict. c. 42, s. 4 (6) and (9), and ss. 5 and 9 (so far as they relate to assurances executed after 1925).	The Mortmain and Charitable Uses Act, 1888.	Superseded by S. L. A. s. 29 (4).
51 & 52 Vict. c. 43, s. 184 ..	The County Courts Act, 1888.	Not re-enacted.
51 & 52 Vict. c. 51	The Land Charges Registration and Searches Act, 1888.	Sect. 4..L. C. A. ss. 10, 20 (8). Sect. 5..L. C. A. ss. 1, 6. Sect. 6..L. C. A. s. 7. Sects. 7 & 8..L. C. A. ss. 1, 8. Sect. 9..L. C. A. s. 9. Sect. 10..L. C. A. ss, 1, 10. Sect. 11..L. C. A. s. 12. Sect 12..L. C. A. s. 13. Sect. 13..L. C. A. s. 14. Sect. 14..L. C. A. s. 10 (8). Sect. 15..L. C. A. s. 1. Sect. 16..L. C. A. s. 16. Sect. 17..L. C. A. s. 17. Sect. 18..L. C. A. s. 19.
52 & 53 Vict. c. 36	The Settled Land Act, 1889.	S. L. A. s. 51.
52 & 53 Vict. c. 47, s. 10 (the words "The Settled Land "Act, 1882, and the "Settled Land Act, "1884")	The Palatine Court of Durham Act, 1889.	S. L. A. s. 113.
53 Vict. c. 5, ss. 135 to 138, so far as they relate to lunatic trustees, except where the Judge or Master in Lunacy is given concurrent jurisdiction with the High Court.	Lunacy Act, 1890	T. A. ss. 44, 49, 50, 51, 52, 54.
53 & 54 Vict. c. 29	The Intestates' Estates Act, 1890.	Not re-enacted.
53 & 54 Vict. c. 69	The Settled Land Act, 1890.	Sect. 4..S. L. A. s. 104. Sect. 5..S. L. A. s. 38. Sect. 6..S. L. A. s. 63. Sect. 7..S. L. A. s. 42. Sect. 8..S. L. A. s. 45. Sect. 9..S. L. A. ss. 10, 39.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
53 & 54 Vict. c. 69 *contd.*...	The Settled Land Act, 1890.	Sect. 10..S. L. A. s. 65. Sect. 11..S. L. A. s. 71. Sect. 12..S. L. A. s. 68. Sect. 13..S. L. A. s. 83. and 3rd Schedule. Sect. 14..S. L. A. s. 75. Sect. 15..S. L. A. s. 87. Sect. 16..S. L. A. s. 30. Sect. 18..S. L. A. s. 57. Sect. 19..L. C. A. s. 6 (5).
53 & 54 Vict. c. 70, s. 74 (1..	The Housing of the Working Classes Act, 1890.	S. L. A. s. 57.
55 & 56 Vict. c. 13	The Conveyancing and Law of Property Act, 1892.	Sect. 2..L. P. A. s. 146. Sect. 3..L. P. A. s. 144. Sects. 4 & 5..L. P. A. s. 146.
55 & 56 Vict. c. 58	The Accumulations Act, 1892.	L. P. A. s. 166.
56 & 57 Vict. c. 21	The Voluntary Conveyances Act, 1893.	L. P. A. s. 173.
56 & 57 Vict. c. 53	The Trustee Act, 1893	Sect. 1..T. A. s. 1. Sect. 2..T. A. s. 2. Sect. 3..T. A. s. 3. Sect. 4..T. A. s. 69. Sect. 5..T. A. s. 5. Sect. 6..T. A. s. 6. Sect. 7..T. A. s. 7. Sect. 8..T. A. s. 8. Sect. 9..T. A. s. 9. Sect. 10..T. A. ss. 36, 37. Sect. 11..T. A. s. 39. Sect. 12..T. A. s. 40. Sect. 13..T. A. s. 12. Sect. 14..T. A. s. 13. Sect. 17..T. A. s. 23. Sect. 18..T. A. s. 19. Sect. 20..T. A. s. 14. Sect. 21..T. A. s. 15. Sect. 22..T. A. s. 18. Sect. 23..T. A. s. 29. Sect. 24..T. A. s. 30. Sect. 25..T. A. s. 41. Sect. 26..T. A. s. 44. Sect. 27..T. A. s. 45. Sect. 28..T. A. s. 46. Sect. 29..T. A. s. 44. Sect. 30..T. A. s. 47. Sect. 31..T. A. s. 48. Sect. 32..T. A. s. 49. Sect. 33..T. A. s. 50. Sect. 35..T. A. s. 51. Sect. 36..T. A. s. 58. Sect. 37..T. A. s. 43. Sect. 38..T. A. s. 60.

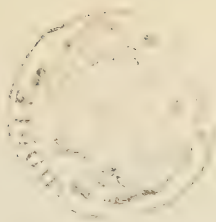
Session and Chapter, and how far Repealed. Except where otherwise stated the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
56 & 57 Vict. c. 53—*contd.*..	The Trustee Act, 1893	Sect. 39..T. A. s. 52. Sect. 40..T. A. s. 55. Sect. 41..T. A. s. 56. Sect. 42..T. A. s. 63. Sect. 43..T. A. s. 59. Sect. 44..L. P. A. s. 92. Sect. 45..T. A. s. 62. Sect. 46..T. A. s. 67. Sect. 47..T. A. s. 64. Sect. 48..T. A. s. 65. Sect. 49..T. A. s. 66. Sect. 50..T. A. s. 68.
57 Vict. c. 10	The Trustee Act, 1893, Amendment Act, 1894.	Sect. 3..L. P. A. s. 92. Sect. 4..T. A. s. 4.
57 & 58 Vict. c. 16 (the reference in the Schedule to the Lis Pendens Act, 1867).	The Supreme Court of Judicature (Procedure) Act, 1894.	Not re-enacted.
57 & 58 Vict. c. 46 (the definition of "tenant" in sect. 94).	The Copyhold Act, 1894 ..	——
59 & 60 Vict. c. 35, s. 3....	The Judicial Trustees Act, 1896.	T. A. s. 61.
60 & 61 Vict. c. 65 ..... [Part I. is only repealed as respects deaths occurring after 1925.]	The Land Transfer Act, 1897.	Part I...A. E. A. Part II...L. R. A.
61 & 62 Vict. c. 65	The Universities and College Estates Act, 1898.	U. & C. E. A.
63 & 64 Vict. c. 26	The Land Charges Act, 1900.	Sect. 1..L. C. A. s. 1. Sect. 2....L. C. A. s. 6; L. P. A. s. 195. Sect. 3..L. C. A. ss. 6 & 7. Sect. 4..L. C. A. s. 18.
7 Edw. 7, c. 7, s. 1.....	The Married Women's Property Act, 1907.	Sect. 1..L. P. A. s. 170.
8 Edw. 7, c. 36, s. 40 (4) and (5).	The Small Holdings and Allotments Act, 1908.	S. L. A. s. 57.
9 Edw. 7, c. 44, s. 7	The Housing, Town Planning, &c. Act, 1909.	S. L. A. s. 107.
1 & 2 Geo. 5, c. 37 (all repealed except sect. 12, so far as it relates to deaths before 1926).	The Conveyancing Act, 1911.	Sect. 1..L. P. A. s. 50. Sect. 2..L. P. A. s. 141. Sect. 3..L. P. A. ss. 99, 100. Sect. 4..L. P. A. s. 101. Sect. 5..L. P. A. ss. 104, 106. Sect. 6..L. P. A. s. 121.

Session and Chapter, and how far Repealed. Except where otherwise stated, the whole Act is Repealed.	Title or Short Title.	Where re-enacted, if at all. The Sections not specifically mentioned are not re-enacted.
1 & 2 Geo. 5. c. 37 —*contd.*...	The Conveyancing Act, 1911.	Sect. 7..L. P. A. s. 169. Sect. 8..T. A. s. 18. Sect. 9..L. P. A. s. 31. Sect. 10..L. P. A. ss. 23, 32. Sect. 11..L. P. A. s. 200. Sect. 12..A. E. A. s. 2. Sect. 13..L. P. A. s. 112. Sect. 14..S. L. A. s. 102. Sect. 15..L. P. A. 4th Schedule.
1 & 2 Geo. 5, c. 40, s. 1....	The Lunacy Act, 1911	T. A. s. 54.
4 & 5 Geo. 5, c. 47, s. 18 ..	The Deeds of Arrangement Act, 1914.	T. A. s. 41.
4 & 5 Geo. 5, c. 59, s. 130..	The Bankruptcy Act, 1914.	Not re-enacted. [*See* A. E. A. s. 34.]
9 & 10 Geo. 5, c. 35, s. 31..	The Housing, Town Planning, &c. Act, 1919.	S. L. A. s. 57.
9 & 10 Geo. 5, c. 59, s. 29..	The Land Settlement (Facilities) Act, 1919.	S. L. A. s. 57.
9 & 10 Geo. 5, c. 99, s. 9 ...	The Housing (Additional Powers) Act, 1919.	T. A. s. 1.
10 & 11 Geo. 5, c. 81, s. 17.	The Administration of Justice Act, 1920.	A. E. A. s. 14.
11 & 12 Geo. 5, c. 55, s. 15 (the words "The Trustee Act, 1893, and").	The Railways Act, 1921 ..	T. A. s. 1.
12 & 13 Geo. 5, c. 16 (all repealed except sect. 43 (8) (relating to glebe), and sects. 128 to 145, and Schedules XII. to XV. (which relate to copyholds, manorial incidents and perpetually renewable leaseholds), and Part XI. (which is general).	The Law of Property Act, 1922.	*Passim.*
12 & 13 Geo. 5, c. 60, s. 2 (3), (4) and (5).	The Lunacy Act, 1922	T. A. s. 54.
13 & 14 Geo. 5, c. 9, s. 21..	The Agricultural Holdings Act, 1923.	S. L. A. s. 73.
15 Geo. 5, c. 4 (all repealed except sects. 1, 2, 9, 10 and 12, and the 1st, 2nd, 8th, 9th and 10th Schedules).	The Law of Property (Amendment) Act, 1924.	*Passim.*

TABLE OF ENACTMENTS AFFECTED, THOUGH NOT EXPRESSLY REPEALED.

The 9th Schedule of L. P. A. 1924, gives the following authoritative statement as to enactments affected by the L. P. A. 1922 and 1924.

Enactments affected.	How affected on the commencement of the principal Act.
1. The Inheritance Act, 1833, as amended by section nineteen of the Law of Property Amendment Act, 1859.	1. Remains in force for the purpose (so far as applicable) of ascertaining the devolution of entailed interests as equitable interests, and of ascertaining the persons who are to take equitable interests as heirs by purchase, but in other respects ceases to apply (save in the case of a lunatic or defective provided for by the principal Act) on intestacies.
2. The Lands Clauses Acts and other statutes giving powers to make title in case of persons under disability.	2. Take effect as if the references to the disabilities which have been removed had been omitted.
3. The Wills Act, 1837	3. Takes effect to enable equitable interests to be disposed of subject and without prejudice to the estate and powers of a personal representative.
4. The Fines and Recoveries Act, 1833, as amended.	4. Remains in force in regard to dealings with entailed interests as equitable interests.
5. The Small Dwellings Acquisition Act, 1899, and other statutes prescribing the mode of effecting mortgages of land.	5. Take effect as if the modes prescribed were by charge by way of legal mortgage or by demise or subdemise, but without prejudice to any statutory power to effect mortgages by deposit of documents.
6. All previous statutory provisions relating to the disposition of copyhold or customary lands.	6. Become obsolete.
7. All statutory provisions requiring a remainderman or reversioner to concur in a conveyance by a tenant for life or statutory owner of settled land.	7. Are inoperative as respects the transfer or creation of a legal estate; a consent in writing by the remainderman or reversioner shall be a sufficient compliance with the statutory provision.



THE NEW PROPERTY STATUTES.

INTRODUCTION.

Summary of the Legislation.

The new legislation with regard to the law of property and conveyancing began with the Law of Property Act, 1922, which was originally to have come into force on the 1st January, 1925. But further consideration of the Act of 1922 revealed the necessity of amendments in various details, especially in the "curtain" provisions contained in sect. 3, and the desirability of consolidating the statutory enactments on the subjects which it affected. Accordingly seven consolidating Bills were prepared dealing respectively with the Law of Property, the Settled Land Acts, Trustees, the Administration of Estates, Land Charges, Registration of Land and Universities and College Estates, and a Bill was drafted containing the desired amendments in the Act of 1922 and in other Acts, and generally preparing the way for consolidation. This amending Bill received the royal assent on the 18th December, 1924, thus becoming the Law of Property (Amendment) Act, 1924, and at the same time the Law of Property (Postponement) Act, 1924, was passed, postponing the operation of the Act of 1922, as amended by the Act of 1924, till the 1st January, 1926. The consolidating Bills received the royal assent on April 9th, 1925, and most of the Act of 1922, as amended by the Act of 1924, has thus disappeared without ever coming into force. The Act has been split up into its component parts, and these have been distributed and inserted in their proper places in the consolidation Acts, with the exception of the parts which relate to abolition of copyhold and customary tenure, extinguishment of manorial incidents, and conversion of perpetually renewable leaseholds into long terms. These provisions

have been left to come into operation as originally enacted with the amendments made by the Second Schedule of the Act of 1924.

The result is that the new legislation now consists of the following enactments:—

The Law of Property Act, 1922, Parts V. and VI. and one section—145—of Part VII., together with the Schedules—XII. to XV.—referred to in those Parts, and sects. 189 to 191 which contain definitions applicable to those Parts and the short title, &c.

The Law of Property (Amendment) Act, 1924, Schedule II., amending the provisions of the Act of 1922 just mentioned, and also Schedules I., IX. and X. which specify the enactments repealed by the Acts of 1922 and 1924, and the enactments affected by the Act of 1922.

The Law of Property Act, 1925.

The Settled Land Act, 1925.

The Trustee Act, 1925.

The Administration of Estates Act, 1925.

The Land Charges Act, 1925.

The Land Registration Act, 1925 (taking the place of the Land Transfer Act, 1875, and Part II. of the Land Transfer Act, 1897, as amended by the above-mentioned Acts of 1922 and 1924).

The Universities and College Estates Act, 1925.

All these Acts are to come into force together on the 1st of January, 1926.

Objects and General Scheme of the Legislation.

The main objects of L. P. A. 1922 have been said to be simplification and economy. With these objects in view, said a Memorandum published in 1921 (Cmd. 1287), the law of real and personal property is assimilated, copyhold tenure, primogeniture and all local and customary laws of succession on death are abolished, and one uniform rule of succession, applicable alike to realty and personalty, is established, amendments are made in the Trustee Acts, the Settled Land Acts, the Conveyancing Acts and the Land Transfer Acts, abstracts are shortened, and, subject to certain safeguards, and after an interval, the powers of establishing registration of title are enlarged.

As regards conveyancing, the general scheme, as stated in the Memorandum referred to above, is—

(1) To introduce a revised and simplified system of deducing title.

(2) To amend the details of the registration system, but to leave it, so far as compulsion is concerned, unaltered for ten years.

(3) To let the two amended systems, conveyancing without registration and conveyancing with registration, go on concurrently for this ten years' period in order that their respective merits may be thoroughly tested.

If the former system proves successful, no need will arise for further orders making registration compulsory. If, on the other hand, the revised system of conveyancing without registration does not prove successful, machinery is provided by which registration may be made compulsory more easily than formerly.

The new Conveyancing System.

The alterations made in the registration system will be found dealt with under the Land Registration Act, *post*. The system of registration is well known and requires no explanatory introduction. But the revised system of conveyancing without registration is so different from the old that, before the details of it are dealt with, it is necessary to give a general sketch of the system. The details are so complicated that the practitioner is in danger of not seeing the wood for the trees.

For many years conveyancing reformers have been greatly intrigued by the contrast between the complications attending the transfer of land and the comparative simplicity of the transfer of such personal property as stock. Their ideal has been to make the transfer of land as simple as the transfer of stock. Seeing that the title to stock was registered, the early reformers appear to have imagined that the explanation of the simplicity of its transfer lay in the fact of registration. If the title to land were only registered, simplicity would immediately follow. But this somewhat crude notion was proved to be fallacious. Simplicity did not follow when registration was tried in practice. Later reformers perceived that the explanation of the contrast lay, not in the presence or absence of a register, but in the great differences existing between the legal

rules applicable to land and stock respectively. If only the legal rules relating to land could be made as simple as those relating to stock, simplicity of transfer would, they thought, follow without the necessity of establishing a register, which for some reason the legal profession and the public did not appear to like. This is the idea embodied in the new legislation.

To quote again from the Memorandum already referred to, "the complications which at present hinder the transfer of land are in the main attributable to the following causes:—

"(1) The Statute of Uses and the general law by which land can be made to pass automatically from one person to another, and on which the intricacies of the mass of highly technical law relating to shifting and springing uses and the like have been built.

"(2) The holding of land in undivided shares, each share being transferable and devolving separately according to its individual title, with the result that the sale of the land as a whole is often impracticable without the very costly procedure of a partition action.

"(3) The equitable doctrine of notice, often involving elaborate investigations on the transfer of land into the equities affecting the land."

These causes of complication the Acts attempt to remove in the following way:—

(1) The Statute of Uses is repealed. So for the most part is the law under which a person who has no legal estate may nevertheless convey the land by the exercise of a power of appointment. The power of vesting the legal interest in land in different persons in succession is abolished. The legal estates which can exist in land are cut down to a minimum, so that, apart from easements, rent-charges (perpetual or for a term of years), rights of entry connected with leases and rent-charges, land tax and tithe rent-charge and similar charges, the only ownership of land which will be recognised at law after 1925 will be the fee simple absolute in possession and terms of years absolute. The other interests formerly existing in the land will continue as before, but for the future only as equitable estates and interests, the person in whom the legal interest is vested holding upon the appropriate trusts for the purpose.

The idea is always to have a tenant or tenants in fee simple absolute in possession who will be able to convey the land. To produce this result, in addition to sweeping away all legal estates and interests

other than those just specified, the Acts contain the following provisions:—

(a) Settled land is vested in the tenant for life of full age or person of full age who has the powers of a tenant for life under S. L. A., and this means practically every limited owner where there is no immediate trust for sale. Instead of merely having a limited interest, he will after 1925 take the whole fee simple estate, or the whole leasehold interest if it is a lease which is settled.

(b) Legal mortgages will no longer be mortgages of the fee simple, for the legal fee simple has to remain in the mortgagor in order that he may be recognised at law as the owner. Mortgages will be for a long term of years.

(c) Outstanding legal estates are got in.

(2) The system of holding land in undivided shares is abolished. This is effected by vesting the land in trustees for sale and making the rights of the holders of the undivided shares attach to the proceeds of sale. This does not mean that the land will immediately have to be sold. Power is given indefinitely to postpone the sale, and, while the land remains unsold, the rights of the beneficiaries will attach to the rents and profits of the land just as they do at present.

(3) Whilst preserving the present law that a purchaser for value of a legal estate in good faith without notice of equities obtains a good title, the Acts reduce to a minimum the number of cases in which he will be affected by notice. This is done—

(a) by introducing a trust for sale in certain cases;

(b) by adopting and extending the principle of the Settled Land Acts;

(c) by requiring certain rights to be registered as land charges on pain of being overreached if not registered.

In this way the framers of the Acts attempt to approximate the transfer of land to a transfer of stock. Legal dealings with stock, they say (Cmd. 1287), are confined to:—

(1) Transfers by the owner of the whole or a part of the stock.

(2) Similar transfers by his attorney.

(3) Transfers on the death of a sole owner by his executors or administrators.

(4) Transfers by the survivor or survivors of two or more joint holders.

(5) Transfers by the trustee in bankruptcy of the holder.
(6) Transfers by persons appointed by the Court to transfer on behalf of the holder or by means of a vesting order.
(7) Transfers by the committee or receiver on behalf of a lunatic or defective.

Consequently the actual title to the legal estate in stock must consist of the simple transfers above described, with, in special cases, the probates, letters of administration, orders by the Court, or in bankruptcy under which title is made. But on a sale of the stock there is no investigation of title, for the name of the owner is entered on a register and he can transfer a good title to a *bonâ fide* buyer free from any equities attaching to the stock unless they are protected by a distringas notice entered on the register.

In the case of land it is impossible to establish quite so simple a system, for the intricacies of modern civilization involve the recognition of other legal interests besides absolute ownership, such as leases, easements, rent-charges and mortgages, and the protection of such equitable rights as the right to enforce a restrictive covenant. And, as a register of title is *ex hypothesi* ruled out, there must be an investigation of title on each dealing with the land, and an abstract of title must, therefore, take the place of a register. But this abstract can be made much simpler than at present, and the changes in the law effected by the Acts will, it is hoped, approximate the title to unregistered land to what the title to stock would be if no register were kept. Abstracts in the future will consist of charges by way of legal mortgage and simple transfers to persons of full age of the legal estate, either absolute or by way of mortgage by demise or sub-demise, interspersed with vesting orders, vesting declarations, leases, probates, and letters of administration; save that if advantage is not taken of the overreaching powers consequent on the payment of capital money to two trustees or a trust corporation, the equitable interests will be abstracted; but a purchaser will usually be able to insist on the statutory powers being employed.

It is, if one may say so, a system of registered transfer without a register, the estate owner taking the place of the registered proprietor, equitable interests being "curtained" off behind the legal estate.

In order to reassure the practitioner who may find some difficulty in understanding the intricacies of the new system, it seems desirable to add that in normal cases the Acts will cause him little trouble. Where there is a single owner in fee simple absolute of full age who

is holding free from any equitable interests the sale will be carried through in the old way, except that the abstract of title will be much simpler and shorter than it has been in the past, and that the conveyance itself may lose some of its mystery to the layman by being described as "this conveyance" instead of "this indenture," and by the omission of the words "and to the use of" and "in fee simple."

The reason of the complication of the Acts is that they have to provide for all cases, especially for the difficulties created by settlements.

Main Features of the Acts.

Before proceeding to set out the provisions of the Acts in detail it may be well to summarise their chief features. These are:—

(1) The curtailment of legal estates.

(2) The vesting of the legal estate.

(3) The protection of purchasers from equitable interests.

(4) The facilitating of the exercise of a trust for sale.

(5) The new system of settlements of land whereby the tenant for life becomes an "estate owner," and two instruments—a "vesting instrument" and a "trust instrument"—are required, and the numerous amendments of the Settled Land Acts.

(6) The amendment of the law relating to the administration of the estates of deceased persons; including

(7) The amendment of the law of intestacy, whereby all the intestate's property is to be held on trust for sale, and all differences between real and personal property as regards devolution are abolished.

(8) The abolition of tenancy in common and coparcenary as legal interests.

(9) The impossibility of vesting a legal estate in an infant.

(10) The conversion of a mortgagee's interest into a term of years instead of a fee simple.

(11) The abolition of copyhold and customary tenure, and the extinguishment of manorial incidents.

(12) The conversion of perpetually renewable leaseholds and leaseholds for lives into long terms.

(13) Amendments of the Land Transfer Acts, 1875 and 1897, as to registration of title.

(14) The multifarious amendments of the Conveyancing, Trustee and other Acts, partly designed to carry out the general scheme of the Acts, partly unconnected with it.

It will be convenient to consider the provisions of the Acts under these fourteen heads, and in the order given.

1. *Curtailment of Legal Estates.*

It should be borne in mind that the main objects of the Acts are to simplify and cheapen conveyancing. The Acts, therefore, are concerned more with amending the machinery of conveyancing than with the alteration of substantive rights. A glance at the fourteen main features just set out will prove the truth of this statement. Apart from numbers (7), (11) and (14)—*i.e.*, the alteration in the rules as to the beneficial succession to an intestate's estate, the abolition of copyhold tenure and manorial incidents, and some of the various amendments of the Conveyancing and other Acts—it will be observed that they are all aimed at clearing the legal title to land, and vesting it in some person or persons of full age who will be able to convey a "clean" title to a purchaser. The object is not to cut down the number of interests which can exist in land, but to reduce to a minimum the rights which can exist at *law*—using that term in contradistinction to *equity*. There is no clearance or simplification of the *equitable* title. The same beneficial interests as at present will be capable of existing in 1926, but many of them will be only possible as equitable interests; they will not be legal interests and will, therefore, not affect a purchaser without notice, and some of them will not affect a purchaser even if he has notice unless they are registered under L. C. A., or, in some cases, even if they are registered. (See PROTECTION OF PURCHASERS FROM EQUITABLE INTERESTS, *post*, p. 15.)

Interests which are by the Acts converted from legal into equitable interests do not fail (L. P. A. s. 4; 1st Sched. Part I.), but are enforceable against the person in whom the legal estate is vested (other than a purchaser who takes free from them) in the manner laid down in L. P. A. s. 3 and S. L. A. s. 16.

The curtailment of legal estates is effected by sect. 1 of L. P. A. The only legal estates in land (note definition of "land" in sect. 205 (ix)) which will be recognised after 1925 will be:—

(a) *An estate in fee simple absolute in possession.* "Possession," it should be noticed, includes receipt of rents and profits or the right to receive the same, if any.

(L. P. A. s. 205 (xix).) A fee simple is none the less in possession because it is subject to a lease. A legal estate may subsist concurrently with or subject to any other legal interest in the same land. (*Ibid.* sect. 1 (5).) A fee simple vested in a corporation is "absolute" although liable to determine by the dissolution of the corporation (L. P. A. s. 7 (2)), and so is a fee simple liable to be divested under the Lands Clauses Acts or any similar statute. (*Ibid.* sect. 7 (1).)

(b) *A term of years absolute.* The definition of this in L. P. A. s. 205 (xxvii) should be noted. It includes a term for a year only or for less than a year or for years and a fraction of a year, or from year to year. A weekly or monthly or quarterly tenancy, though not expressly mentioned, would apparently come under the head of a term for less than a year. The term is "absolute" although it may be liable to determination by notice, re-entry, operation of law (*e.g.*, where it is created for a specified purpose and the purpose is accomplished) or by provision for cesser on redemption (so that mortgage terms are within the expression), but a term determinable with the dropping of a life or lives is not within the definition, and can, therefore, only exist in equity, though such a lease, at a rent or made in consideration of a fine, existing at law at the commencement of the Act or purported to be created afterwards at law will be treated as a term for ninety-nine years determinable. (See sect. 149 (6) of L. P. A., *post.*) It should be noticed that, to be a legal term, the lease need not be in possession; it may be in reversion, subject to the limitation mentioned in L. P. A. s. 149 (3)—that a term at a rent or granted in consideration of a fine cannot be created at law after 1925 to take effect more than twenty-one years from the date of the instrument purporting to create it, though it may sometimes be created in equity.

In addition to these two legal estates certain interests or charges in or over land will still be recognised at law after 1925. These also, when actually created as legal interests, are called in the Act "legal estates." (L. P. A. s. 1 (4).) They are:—

(a) *An easement, right or privilege in or over land for an interest*

equivalent to an estate in fee simple absolute in possession or a term of years absolute.

(b) *A rent-charge in possession issuing out of or charged on land being either perpetual or for a term of years absolute.* A rent-charge for life or in reversion, it should be noted, will not be a legal interest, but will only be possible in equity. A rent-charge may be created out of another rent-charge. (L. P. A. s. 122.)

(c) *A charge by way of legal mortgage.* This is a novel form of legal mortgage introduced by the Act. Its nature is explained in L. P. A. s. 87, *post*. It operates as if a legal term of years had been granted to the mortgagee. A legal mortgage in fact created by demise is a legal estate by virtue of being a term of years absolute. (See above.)

(d) *Land tax, tithe rent-charge, and any other similar charge on land which is not created by an instrument.*

(e) *Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rent-charge.* So that a lessor's right of re-entry under a lease will still operate at law (see L. P. A. s. 6), and so will a right of entry attached to a perpetual rent-charge in possession or a rent-charge for a term of years absolute in possession (see also L. P. A. s. 121 as to the remedies of the owner of a rent-charge), but there can be no legal right of entry in respect of a rent-charge for life or a rent-charge not in possession.

All the above-mentioned estates, interests and charges, when they subsist at law, are called "legal estates" in the Act, and have the same incidents as legal estates subsisting at the commencement of the Act. The owner of a legal estate is called "an estate owner." (Sect. 1 (4).)

All other estates, interests and charges in or over land take effect as equitable interests (sect. 1 (3)), and are called in the Act "equitable interests." (Sect. 1 (8).)

A legal estate cannot subsist or be created in an undivided share in land (see UNDIVIDED SHARES, *post*, p. 37), nor can it be held by an infant. (Sect. 1 (6); see INFANTS, *post*, p. 39.)

Just as the Act reduces the number of possible legal estates, so it cuts down legal powers of appointment. With a few exceptions,

every power of appointment over or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the Act, is to operate only in equity (sect. 1 (7)) and is called in the Act an "equitable power." (Sect. 1 (8).) The exceptions are:—

(1) Powers vested in a legal mortgagee. (Sect. 1 (7).) This preserves a mortgagee's power to sell. (See also sect. 8 (1).) "Mortgagee" includes a chargee by way of legal mortgage. (Sect. 205 (xvi).)

(2) Powers vested in an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf. (Sect. 1 (7).) This preserves the right of the owner of a legal rent-charge to create a legal term for raising arrears of the rent (see also L. P. A. ss. 8 (2), 121 (4)), and of an estate owner to give a power of attorney; also of the administrator of a convict to dispose of the convict's land under the Forfeiture Act, 1870 (see sect. 7 (3) of L. P. A.), and of the committee or receiver of a lunatic or defective to convey. (See L. P. A. ss. 22 and 171.)

(3) Certain statutory powers, *e.g.*, under sect. 77 of the Lands Clauses Act, 1845. (See L. P. A. s. 7 (3); and see Note at the end of Specimen Abstract No. 1 in 6th Schedule.)

(4) Certain powers of leasing—*e.g.*, of a mortgagor or mortgagee or under S. L. A. (L. P. A. s. 8 (1).)

(5) Power to convey under order of Court or to make vesting declarations, &c. (See L. P. A. s. 9.)

The result of sect. 1 of L. P. A. is a great simplification of the legal estate. After 1925 the legal title will be cleared of fees determinable whether by limitation or condition, estates tail (see L. P. A. s. 130), common law conditions of re-entry or reverter in connection with a fee simple estate, life estates, remainders, reversions (except where the particular estate is a term of years, in which case the reversioner strictly has an estate in possession), springing uses, shifting uses, executory devises, powers of appointment (except those specified above), rent-charges for life, and tenancy in common and coparcenary. All these interests will still be possible but only as equitable interests. Any such interests which are existing at law immediately before the commencement

of the Act will be converted into equitable interests as from the commencement of the Act. (L. P. A. s. 39; 1st Sched. Part I.)

The Statute of Uses, which enabled so many interests to be created at law which could formerly only be created in equity, is repealed, and so is sect. 62 of C. A. 1881, which allowed easements, &c. to be created by means of a use, but the repeal does not affect the operation of the two statutes in regard to dealings taking effect before 1926. (L. P. A. s. 1 (10).)

2. *The Vesting of the Legal Estate.*

In order to carry out the idea of the Acts that there shall always be an estate owner or estate owners able to give a good title to a purchaser, as far as possible without the concurrence of other parties, provision is made by sect. 39 of L. P. A. and Part II. of 1st Schedule for vesting the legal estate in the person designed to be the estate owner if it is not already vested in him at the beginning of 1926.

A legal estate may be outstanding for various reasons. For instance, where a term of years has been created out of a leasehold interest for a certain purpose, and the purpose has been accomplished, at the present time the sub-term does not automatically cease. The Satisfied Terms Act, 1845, only applies to terms derived out of freeholds. (*Re Moore and Hulm*, (1912) 2 Ch. 105.) A surrender of the sub-term is, therefore, necessary at the present time in order to put an end to it. But this is sometimes forgotten, with the result of leaving a legal sub-term outstanding. The L. P. A. vests such an outstanding term in the owner of the reversion expectant thereon (1st Schedule, Part II. para. 1), and the Satisfied Terms Act, 1845, in a re-enacted form, is made to apply to sub-terms, whenever created, which become satisfied after 1925. (L. P. A. s. 5.)

Again, it sometimes happens that when a legal mortgage is paid off no reconveyance is executed, with the result that the legal estate remains outstanding in the mortgagee. This cures itself at present only by the lapse of thirteen years, the mortgagee's rights after that time being barred by the Real Property Limitation Act, 1874 (*Sands to Thompson*, 22 Ch. D. 614), but by para. 2 of Part II. of 1st Schedule of L. P. A. any such outstanding legal estate will be immediately extinguished when the Act comes into operation.

Again, the legal estate may be outstanding in a bare trustee. Here the legal estate will at once be taken out of the trustee—not being a trustee for sale—and vested in the person who could call for a conveyance of it. (1st Sched. Part II. para. 3.) Who this is appears below.

But, however common these cases may be of legal estates outstanding independently of the Act, they are infinitesimal in number compared with the cases in which the legal estate would be outstanding because of the Act if no provision were made to vest it in the proper person. Part I. of 1st Schedule of L. P. A. converts countless legal interests into equitable. The owner of one of these interests loses his legal estate by virtue of the Act. Where does the legal estate vest? For instance, if on the 31st December, 1925, there are a legal tenant for life and a legal remainderman, where is the legal fee simple on the 1st January, 1926? This also is dealt with by Part II. of 1st Schedule, and it may be stated shortly that the effect of the Act is to vest the legal estate in the person who is designed by the Act to be the estate owner.

Estate owners are of various kinds, but before enumerating them it will save repetition to state that an infant cannot be an estate owner (L. P. A. s. 1 (6); s. 205 (v)), nor can a legal estate be held in undivided shares (*ib.* s. 1 (6)), but the existence of a legal mortgage will not prevent the person entitled to the land subject to the mortgage from being an estate owner, for after 1925 a mortgagee will not have the fee simple, or the whole lease in the case of a mortgage of leasehold property, but merely a term of years derived out of the freehold or leasehold. (See MORTGAGES, *post*, p. 10.) For the sake of simplicity, in enumerating the various estate owners, the legal estate is treated as being a fee simple absolute, but what is said is equally applicable to terms of years absolute. The different estate owners are:—

(1) *Beneficial owner.*—His position is not affected by the Acts except that the Acts enable him to make a title free from equitable interests (with many exceptions) to which his estate may be subject without the concurrence of the persons entitled to those interests, either by conveying to trustees in the manner mentioned in L. P. A. s. 2, or by executing a deed declaring that the land is vested in himself as a trustee (S. L. A. s. 21); and that, in case of a joint tenancy, a trust for sale is created. (L. P. A. s. 36.)

(2) *Trustee.*—There are the following classes of trustees:—

(a) Ordinary trustees for sale without any beneficial interest in the property. They have, in addition to any powers given to them by the trust instrument, all the powers of disposition of a tenant for life under S. L. A. (L. P. A. s. 28.)

(b) Trustees for sale with a beneficial interest, as where the land has been conveyed to A. and B. beneficially as joint tenants in fee simple (L. P. A. s. 36), or where the land has been conveyed to them as tenants in common, in which case they hold as joint tenants on trust to sell. (L. P. A. s. 34.) They have the same powers of disposition as trustees for sale above.

(c) A tenant for life, or person who has the powers of a tenant for life by virtue of S. L. A. (S. L. A. ss. 19 and 20.) This appears to mean practically all limited owners entitled to an estate in possession in land where there is no trust for sale, *e.g.*, the ordinary tenant for life, a tenant in tail, a tenant in fee simple with a limitation over, but not, of course, a mere lessee. The Acts make him an estate owner, vesting the fee simple absolute or the term of years absolute in him, or providing machinery by which it may be so vested. He has all the S. L. A. powers of disposition as extended by the settlement. (See SETTLEMENTS, *post*, p. 22.)

(d) A "statutory owner." He comes into play when the tenant for life, or person having the powers of a tenant for life, is an infant, or where an infant is beneficially entitled to an estate in fee simple or term of years absolute in possession, or when there are successive owners of land, not settled on trust for sale, and for any reason there is no person who has the powers of a tenant for life (S. L. A. s. 117 (xxvi)); *e.g.*, where a tenant in tail is prevented by Parliament from barring the entail in land purchased with money provided by Parliament in consideration of public services. (S. L. A. s. 23.) The statutory owner will usually be the trustees of the settlement for the purposes of S. L. A., but may be the personal representatives, as where land is devised to an infant. (S. L. A. s. 26.) The "statutory owner" has the same powers as (c) above.

(e) *Trustee in bankruptcy.*—But he will only become an estate owner if the bankrupt's beneficial interest was an absolute one, not where it was, and still is, limited. (S. L. A. s. 103.)

(f) *Administrator of a convict.*—The Forfeiture Act, 1870, is not affected. (L. P. A. s. 7 (3).)

(3) *Personal representative.*—In reading the Acts it must be borne in mind that there will really be two kinds of personal representatives after 1925: (a) the ordinary executor or administrator, whose powers of disposition are increased by A. E. A., especially sect. 39, and (b) the special personal representatives appointed in connection with land of which the deceased was tenant for life, or other limited owner under a settlement (not being a settlement on trust for sale). The functions of the latter are to see that death duties are paid (L. P. A. s. 16 (1)), and, subject thereto, to vest the land in the person next entitled if he is of full age. (S. L. A. s. 7 (1).) Usually the special personal representatives will be the trustees of the settlement. (A. E. A. ss. 10 and 22.)

(4) *Mortgagee.*—But in this case his interest can only be a term of years absolute. As to his powers, see *post*, p. 44, under MORTGAGES.

Legal estates, then, outstanding at the commencement of the Acts, will vest in the appropriate estate owner in the way laid down in 1st Schedule, Part II., of L. P. A. To meet the case of legal estates outstanding in the future, sect. 42 (3) of L. P. A. avoids any stipulation in a contract for sale or exchange made after 1925 to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser, or that he shall not object to its outstanding. And provision is made by sect. 42 (4) to prevent the vendor from avoiding the necessity of getting in the legal estate by selling only the equitable interest.

3. *Protection of Purchasers from Equitable Interests.*

As the law stands apart from the new Acts, a purchaser of land takes subject to the *legal* rights of third persons, whether he knows of them or not, and subject also to equitable rights of which he has notice, actual or constructive, unless in either case he takes a conveyance from someone who is able to make a title free from such rights, as where he buys from a tenant for life selling under S. L. A.

1882 to 1890, or unless such rights are void against him for want of registration. On the other hand, a purchaser of a legal estate takes free from equitable interests of which he has no notice, actual or constructive. After 1925 these propositions will still be substantially true, but their application will not produce the same effect for the following reasons:—

(1) The number of possible legal rights which can exist in or over land is very much reduced (see *ante*, p. 8), and the number of rights which will not affect a purchaser of a legal estate by reason of his not having notice of them is correspondingly increased.

(2) The number of rights against land which must be registered in order to bind a purchaser is very largely increased by L. C. A. At the present time, it is necessary to register at the Land Registry pending actions, rent-charges for life not created by marriage settlement or will, deeds of arrangement, writs and orders affecting land, and statutory land charges. After 1925, not only will these things have to be registered (with the exception of rent-charges for life created after 1925 (L. C. A. ss. 4 and 10)), but it will also be necessary to register—

(1) petitions and receiving orders in bankruptcy (*ibid.* ss. 2 and 6);

(2) legal mortgages not protected by a deposit of documents relating to the legal estate affected, *i.e.*, practically second, third or subsequent mortgages, which are converted by L. P. A. from equitable into legal mortgages (see MORTGAGES, *post*, p. 43), and are called in the Acts "puisne mortgages";

(3) A limited owner's charge given to him by statute for death duties or other liabilities discharged by him (L. C. A. s. 10);

(4) contracts to convey a legal estate, including options to purchase, called in the Acts "estate contracts" (*ibid.*);

(5) the Inland Revenue Commissioners' charge for death duties in respect of a death occurring after 1925 (*ibid.*; and see sects. 16 to 18 of L. P. A.);

(6) covenants restrictive of the user of land entered into after 1925, not being covenants between lessor and lessee (L. C. A. s. 10);

(7) equitable easements created or arising after 1925 (*ibid.*);

(8) any other equitable charge not secured by a deposit of documents relating to the legal estate affected and not arising, or affecting an interest arising, under a trust for sale or a settlement, and not being a rent-charge for life (a charge of this class is called "a general equitable charge") (*ibid.*);

(9) local land charges, *i.e.*, a local authority's statutory charge for making up streets, drainage, &c. These have to be registered in a local registry. (L. C. A. s. 15.) The other eight require registration in the Land Registry.

The provisions of the Acts with regard to the necessity for registration and the effect of non-registration are rather complicated and confusing, and the sections of L. C. A. require careful reading. It will be found that some of the interests above referred to have to be registered whether they came into existence before or after the commencement of the Act, while others only have to be registered if they came into existence after such commencement or, in some instances, if though created before, they are transferred after such commencement. (And see sect. 2 (5) of L. P. A.) It will be found also that the effect of non-registration is not always the same. In most instances the interest, if unregistered, is void against any person, including a mortgagee or lessee, who for valuable consideration takes any interest in land, but in a few instances, *e.g.*, the Commissioners' charge for death duties or a restrictive covenant, non-registration only makes it void against a purchaser of a legal estate for money or money's worth, and, in the case of an unregistered bankruptcy petition or receiving order, it is only a purchaser of a legal estate for money or money's worth without notice of an available act of bankruptcy who is not bound thereby. With the sections of L. C. A. should be read also sect. 2 of L. P. A., and sect. 21 of S. L. A.

It must be borne in mind that, where any instrument or matter capable of registration under L. C. A. is void or unenforceable against a purchaser by reason of non-registration, he will not be prejudicially affected by the fact that he has notice of it (L. P. A. s. 199 (1)); and that, *per contra*, if it is registered, registration so long as it continues in force will constitute actual notice. (L. P. A. s. 198.)

Special provisions are made as to registration in Yorkshire and Middlesex (see L. P. A. ss. 11 and 197, and L. C. A. ss. 10 and 18),

and as to land registered under L. R. A. (L. C. A. s. 23. See also L. R. A., *post*, p. 368.)

The practical result of these provisions as to registration will be that a search before completion will have to be made in every instance—as it should be even at the present time—and that the task of ascertaining whether there are any rights by which the title is affected will be rendered easier than heretofore. An official search may be obtained as to all matters registered at the Land Registry. (L. C. A. s. 17.)

If the search reveals an equitable interest protected by registration, which will not be overreached by the conveyance to him, the purchaser of a legal estate (unless, of course, he has bought subject to such interest) is entitled to call upon the vendor to have the registration cancelled, or to require that the owner of the equitable interest shall concur in the conveyance. Where neither can be done, the purchaser will be entitled to rescind the contract. (L. P. A. s. 43.)

(3) The doctrine of constructive notice is somewhat curtailed. Not only is sect. 3 of C. A. 1882 re-enacted by sect. 199 of L. P. A., but, as has already been mentioned, by the same section a purchaser is not to be prejudicially affected by notice of rights capable of registration under L. C. A., but not in fact registered, and by sect. 44 (5) of L. P. A., the law of *Patman* v. *Harland*, 17 Ch. D. 353, is reversed as regards contracts entered into after 1925. A purchaser of a lease or underlease, who under an open contract is not entitled to call for the title to the freehold or to any superior lease, is not to be deemed affected with notice of any matter or thing of which he might have had notice if he had contracted that such title should be furnished. And the same rule will apply to a person who takes a lease or an underlease under an open contract. Moreover, by sect. 44 (8) a purchaser is not to be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by the Act, *i.e.*, thirty years usually, or by any other statute (*e.g.*, V. and P. Act, 1874), or by any rule of law, he might have had notice, unless he actually makes such investigations or enquiries. This provision appears merely to remove doubts. It will be observed that it does not apparently affect the law of *Re Cox and Neve's Contract*, (1891) 2 Ch. 109, to the effect that a purchaser, who agrees to take a shorter

title than he could call for under an open contract, is deemed to have notice of equities appearing on the title during the statutory period.

In connection with constructive notice, sects. 13 and 14 of L. P. A. should be observed. The fact that a vendor has not got possession of the title deeds may still give notice of the rights of third persons, the Act not affecting rights arising out of or consequent on possession of any documents of title relating to a legal estate in land. (Sect. 13.) And the possession or occupation of land may still give notice of the rights of the person in possession or occupation, his rights not being affected by the Act. (Sect. 14; cp. *Hunt* v. *Luck*, (1902) 1 Ch. 428.) "Possession" includes receipt of rents and profits. (L. P. A. s. 205 (xix).)

(4) Even if the purchaser has notice of equities, he may take free from them because the person conveying to him has power to overreach them. This is so to a large extent apart from the Acts, but the Acts extend these overreaching powers. (See especially sect. 2 of L. P. A., and sect. 21 of S. L. A.) The cases in which they exist are:—

(i) Where the conveyance is made under the powers conferred by S. L. A. or by the settlement. The effect of a conveyance by a tenant for life or statutory owner will be found in sect. 72 of S. L. A., which replaces sect. 20 of S. L. A. 1882 with some modification. It will be observed that the tenant for life can overreach all rights arising under the settlement except (a) legal mortgages and charges by way of legal mortgage created to secure money actually raised, and (b) leases and grants at fee farm rents or otherwise, and grants of easements, &c., granted or made for money or money's worth under the settlement, and registered under L. C. A. where capable of registration. If not registered, they can be overreached, and in the case of a rent-charge for life, or a limited owner's charge for death duties and other liabilities or a general equitable charge (see sect. 10 of L. C. A.) they can be overreached even if registered. The task of a purchaser's solicitor where the sale is under S. L. A. is much facilitated by sect. 110 of S. L. A. (See *post*, pp. 26, 277.)

(ii) Where the conveyance is made by trustees for sale. A purchaser of a legal estate is not concerned with the trusts affecting the proceeds of sale or the rents and profits till sale, even if the trusts are declared by the same instrument. (L. P. A. s. 27.) There is nothing new in this, but trusts for sale will be much more frequent after 1925 than before, since the Acts create trusts for sale in several cases, *e.g.*, in the case of undivided shares (L. P. A. ss. 34 and 35), and joint beneficial ownership (*ibid.* s. 36), and on an intestacy. (A. E. A. s. 33.) Moreover, trustees for sale have all the powers of a tenant for life under S. L. A., and, therefore, the same power to overreach equities as he has. (L. P. A. s. 28.)

(iii) Although there is no settlement or trust for sale under which equitable interests can be overreached, the estate owner can overreach them by creating a trust for sale or a settlement. (L. P. A. s. 2 (2); S. L. A. s. 21.) But he will have to appoint two or more individuals approved by the Court, or a trust corporation, to be trustees or trustee and receive the capital money; and there are many equities which cannot be overreached in either of these ways. The provisions are set out under the Acts.

(iv) Where the conveyance is made by a mortgagee in exercise of his paramount powers. (See sect. 104 of L. P. A., which makes little change in the law.) There is, however, a useful provision in sect. 113 to the effect that a person dealing in good faith with a mortgagee is not to be concerned with any trust at any time affecting the mortgage money, whether he has notice of the trust or not, and need not investigate the equitable title to the mortgage debt.

(v) Where the conveyance is made by a personal representative in exercise of his paramount powers. His powers of disposition are dealt with in sect. 39 of A. E. A., which gives him the same overreaching powers as a trustee for sale has. Moreover, the difficulty which has sometimes arisen owing to an executor having lost his powers by assenting to a devise (see, *e.g.*, *Wise* v. *Whitburn*, (1924) 1 Ch. 460) is met by sect. 36 (6) of A. E. A., which protects a purchaser of a legal estate who acts on a statement in writing by a personal representative that he has

not given any assent. Further, by sect. 36 (8) of A. E. A., a conveyance of a legal estate by a personal representative is not invalidated by the purchaser having notice that all debts, &c. have been paid. And a purchaser is protected even though the grant of probate or administration is afterwards revoked. (A. E. A. s. 37.)

(vi) Where the conveyance is made under an order of the Court. There is nothing new here, but it may be mentioned that sect. 204 of L. P. A. replaces sect. 70 of C. A., 1881, protecting a purchaser from the consequences of the order being made without jurisdiction or the proper consents, &c.

In all these cases where equitable interests are overreached in favour of a purchaser of a legal estate, the rights of the owner or his remedies for enforcing them are not otherwise affected. (L. P. A. s. 2 (4); S. L. A. s. 21 (3).) As to their enforcement, see sect. 4 of L. P. A., and sect. 16 of S. L. A.

To carry out the policy of the Acts to keep equities off the title, certain auxiliary provisions are contained in L. P. A. Thus, with regard to the abstract, sect. 10 enacts that, where interests or powers will be overreached by the conveyance, it is not necessary or proper to include in the abstract an instrument relating only to them, and a solicitor will not be liable for omitting the instrument nor will any liability be implied by reason of its inclusion. But equitable interests or powers not overreached must be disclosed and the instrument abstracted. Further, certain stipulations in contracts made after 1925 requiring a purchaser to take a conveyance from persons entitled to equitable interests instead of from the estate owner under the Act are avoided. If title can be made under a trust for sale or under the powers conferred by L. P. A., S. L. A., or any other statute, a purchaser of a legal estate can, notwithstanding a stipulation to the contrary, require that title be made under such powers without the concurrence of the persons entitled to the equities. (L. P. A. s. 42 (1).)

4. *Trust for Sale.*

Sects. 23 to 33 of L. P. A. contain various useful provisions facilitating the exercise of a trust for sale and protecting a purchaser from the trustees. Three of the sections are merely reproductions of previous statutory enactments—sect. 23, which replaces

sect. 10 (3) of C. A. 1911, as to the duration of trusts for sale; sect. 31, which replaces sect. 9 of C. A. 1911, as to property vested in trustees by way of security becoming discharged from the right of redemption; and sect. 32, re-enacting sect. 10 (1) of C. A. 1911, which implies a trust for sale of land bought under a personalty settlement. But there are many new provisions, notably sect. 25, which gives full power to postpone sale unless the instrument shows a contrary intention; sect. 26, which, where the consent of more than two persons is required to the exercise of a trust for sale, makes the consent of two sufficient so far as a purchaser is concerned and exempts him from seeing that the trustees are complying with the wishes of the beneficiaries; sect. 28, which, as mentioned above (*ante*, p. 14), gives trustees for sale all the S. L. A. powers; and sect. 30, which enables parties interested to apply to the Court to compel the trustees to exercise their powers.

In connection with trusts for sale, it must be borne in mind that land settled on trust for sale is not within S. L. A. Under the old law, the Court could authorise the tenant for life to exercise the statutory powers over land settled on trust for sale. (S. L. A. 1882, s. 63; S. L. A. 1884, s. 6.) This will not be possible after 1925, but the trustees will be able to delegate to him their powers of leasing, accepting surrenders of leases and management. (L. P. A. s. 29.) The effect of the sections is stated *post* under the Act.

5. *Settlements and the Settled Land Act.*

The new form of strict settlement.—In attempting to understand the provisions of the new legislation relating to settlements it is necessary to bear in mind that a settlement of land may take one of two forms—a trader's settlement or a strict settlement. The former presents little difficulty to the reformer intent on simplifying and facilitating the transfer of land, for under it the land is settled on trust for sale and the purchaser is not concerned with the trusts on which the purchase-money is to be held. Indeed, if the settlement is properly drawn he knows nothing about them, for they are declared by a separate instrument. Where the settlement is made *inter vivos*, there are usually two deeds, one vesting the property in trustees on trust to sell, the other declaring the trust of the proceeds of sale. But whether the trusts are declared by the vesting instru-

ment or by a separate deed, the receipt of the trustees will be a sufficient discharge to the purchaser and will effectually exonerate him from seeing to the application of the money and from liability for any loss or misapplication thereof. (T. A. s. 14.)

With a trust for sale, therefore, the new legislation is concerned only in a minor degree, though it contains some useful provisions facilitating the exercise of the trust for sale. (See *ante*, p. 22.)

It is when we turn to strict settlements that we find the new Acts introducing really drastic innovations. Strict settlements have always been the greatest obstacle in the way of simplification of title. The power to limit successive legal interests in land has done more than anything else to hinder free alienation. The S. L. A. 1882 to 1890, of course, effected a great improvement, but the new legislation goes much further. The most important part of the new legislation with regard to settlements will be found in the earlier sections of S. L. A. which, it must be remembered, have no application where land is conveyed to trustees on trust for sale, but which, it must not be forgotten, apply not only where there is a settlement on life tenant and remainderman in the ordinary form, but also in nearly all cases where there are successive beneficial interests in land.

It will assist the reader to understand these provisions as to settlements if we remind him that, apart from the new Acts, a solicitor acting for a purchaser buying from a vendor professing to sell under the S. L. A. has to satisfy himself (*inter alia*) on three points:—(1) That the land is settled land within the meaning of the Acts. (2) That the vendor is a tenant for life or person having the powers of a tenant for life under the Acts. (3) That there are trustees of the settlement for the purposes of the Acts.

The way in which the new Acts proceed to simplify the task of the purchaser's solicitor with regard to these points is to provide machinery whereby there will be, as it were, a certified tenant for life and certified trustees. The scheme is to assimilate the form of a strict settlement to that of a settlement on trust for sale or of personalty. Every settlement of a legal estate in land made *inter vivos* after 1925 will have to be effected by means of two deeds (except as otherwise provided; see S. L. A. s. 9). Just as when stocks and shares are settled *inter vivos* at the present time they are vested in the trustees not by the settlement itself, but by the appropriate transfers, and just as when realty is settled on trust for sale the conveyance to the trustees is effected by a separate instrument

and not by the deed which sets out the trusts, so after 1925 to create a strict settlement *inter vivos* there will have to be—

(i) a conveyance of the land for the estate or interest the subject of the settlement—this is called "the vesting deed"; and

(ii) a deed declaring the trusts affecting the settled land—this is called "the trust instrument."

(i) The vesting deed will contain (a) a description of the settled land; (b) a statement that it is vested in the tenant for life or statutory owner upon the trusts from time to time affecting the settled land; (c) the names of the trustees of the settlement for the purposes of S. L. A.; (d) any extension of the S. L. A. powers; and (e) the name of any person who has power to appoint new trustees. (S. L. A. ss. 4 and 5; Form No. 2 in 1st Sched.)

It will be noticed that the whole estate or interest which is the subject of the settlement will be vested in the tenant for life or person having the powers of a tenant for life under the Act. Sect. 1 of L. P. A. does away with the possibility of limiting successive legal estates in the settled land. It would have been possible, of course, to get over the difficulty by vesting the legal estate in the trustees of the settlement on trust for the persons successively entitled under the trust deed, but this was considered undesirable for many reasons. The S. L. A. vests the legal estate where it should be, viz., in the person who has the powers of disposition under the S. L. A. The so-called tenant for life, therefore, fills a dual capacity. He is legal owner of the whole fee simple, or of the entirety of the term of years if the property settled is leasehold, but he is beneficially entitled only for his life, for he holds on the trusts of the settlement.

But it is only where the tenant for life is of full age that the settled land will vest in him. An infant cannot be an estate owner. During a minority the land will be vested in the statutory owner, *i.e.*, usually the trustees of the settlement. (See *post*, p. 39.)

(ii) The trust instrument will be made between the same parties as the vesting deed. A form is given—Form No. 3 in the 1st Schedule—of a settlement made on marriage of land belonging to the intended husband. The parties are the intended husband and wife and the trustees of the settlement, who must be the same as the trustees of the vesting deed. The husband agrees to hold the hereditaments comprised in the vesting deed in trust for himself until

the solemnisation of the intended marriage and thereafter on the usual trusts. The form directs the addition of the trusts of the portions term, and any other proper provisions, including the appointment of the S. L. A. trustees, any extension of the S. L. A. powers, and a power for the tenant for life for the time being of full age to appoint new trustees. The trust deed must bear any *ad valorem* duty which may be payable (whether by virtue of the conveyance or otherwise) in respect of the settlement. (S. L. A. s. 4.)

This is the only way in which it will be possible to settle land in strict settlement *inter vivos* after 1925. Where the settlement is made by will of a person dying after 1925, the will is to be deemed the "trust instrument," and the place of the "vesting deed" will be taken by a "vesting assent" which the personal representatives will be bound to execute, subject to their rights and powers for the purposes of administration, and to their being satisfied that all death duties will be provided for. This vesting assent, which must be in writing but need not be stamped (S. L. A. s. 14 (2)), will vest the settled land in the tenant for life of full age or statutory owner. (S. L. A. ss. 6 and 8.)

Provision is made to meet the case of settlements existing when the Acts come into operation, so that the land may be vested, or declared to be vested, by a vesting instrument in the tenant for life of full age or statutory owner. (S. L. A. 2nd Sched. See *infra*, p. 27.)

There will, therefore, eventually in most cases be two instruments, a trust instrument and a vesting instrument, whereby the limitations of the equitable interest will be taken off the title.

The whole fee simple, or the absolute interest in a lease, being vested in the tenant for life of full age or statutory owner, the Acts naturally have to make provision as to its devolution on death, or on any other change of ownership. Under the law apart from the Acts the land passes automatically on the death of the tenant for life to the remainderman. The A. E. A. provides for its devolving in the first instance on the life tenant's death upon special personal representatives, who will usually be the S. L. A. trustees (A. E. A. ss. 22 to 24, and see s. 10), who are to convey the land by a vesting assent to the next tenant for life or statutory owner or to the person (if any) of full age who has become absolutely entitled to the land—subject to their being satisfied that any death duties and costs will be provided for. (S. L. A. ss. 7 and 8.)

Similarly, provision is made for the vesting of settled land, which has been held by trustees or personal representatives or any other person during the minority of an infant. The infant on attaining majority can call for the proper vesting instrument. (*Ibid.*) And the same sections deal with the case of a tenant for life ceasing to be the beneficial owner by reason of forfeiture or surrender or in any other way.

In reading what is stated above, the wide meanings of "settlement," "settled land," and "tenant for life" must be borne in mind. (See S. L. A. ss. 1, 2, 19 and 20.) The Act applies to nearly every case where the beneficial interest in land is limited to persons in succession.

The title to the settled land will, therefore, consist mainly of a series of vesting instruments, probates and letters of administration. The settlement will be taken off the title. A purchaser of a legal estate in settled land from a tenant for life or statutory owner will not require, nor will he be entitled, to call for information as to the trust instrument or any *ad valorem* stamp duty thereon, with the one exception that he must in some instances see that the first vesting instrument vested the land in the right person, and that the land disposed of to him is comprised in that instrument, and that the persons thereby stated to be trustees are the properly constituted S. L. A. trustees. With this one exception, he must assume, if the last or only principal vesting instrument contains the required particulars, that (*inter alia*)—

(a) the person in whom the land is thereby stated to be vested has all the S. L. A. powers; and

(b) the trustees thereby stated to be S. L. A. trustees, or their successors appearing to be duly appointed, are the properly constituted trustees of the settlement. (S. L. A. s. 110.)

The Act thus creates, as we said above, a sort of certified tenant for life and certified trustees.

The above is only a bare outline of the effect of the S. L. A. as regards strict settlements. The details of the system will be found set out, *post*, under the Act. No attempt is made here to estimate the comparative advantages and disadvantages of the new system. That in many respects the task of investigating title on a purchase under S. L. A. will be easier after 1925—or rather after the profession has grown familiar with the complicated provisions of the new Act—is scarcely open to doubt. But it may well be doubted

whether the machinery set up to produce this result will not produce disadvantages and difficulties to the owners of land which may well outweigh the advantage of simplification of title to a purchaser.

A study of the forms which are set out in the 1st Schedule to S. L. A. will greatly assist in understanding the new system of strict settlements, and the effect of the new system in keeping equities off the title will be more readily grasped by a careful perusal of the specimen abstracts of title set out in the 6th Schedule to L. P. A. Much that is obscure in the sections of the Act will become plain when these forms and epitomes of abstracts have been closely read.

Transitional provisions.—The provisions to bring existing settlements into line with the new scheme of strict settlements are contained in the 2nd Schedule to S. L. A. In reading the schedule, the wide meaning of "settlement" must be borne in mind. It will be found in sect. 1 of S. L. A. If the settlement has been made by will and the land is still vested in personal representatives at the beginning of 1926, the land will remain vested in them, but when they have finished their work of administration and are satisfied that provision has been or will be made for payment of death duties, they must, when required to do so, execute a vesting instrument—which may be an assent—to vest the land in the tenant for life (as defined by S. L. A. s. 19) or statutory owner (as defined by sect. 117 (xxvi)). (2nd Sched. para. 2.) In any other case of an existing settlement (except when the persons entitled beneficially in possession are entitled in undivided shares (see as to this case, *post*, p. 126)), the trustees of the settlement, whether the land is already vested in them or not, may execute a principal vesting instrument (see sect. 5), and must do so on the request of the tenant for life or statutory owner. If there are no trustees, they must be appointed out of Court if possible; if not, by the Court. (2nd Sched. para. 1.) The vesting instrument must be executed as soon as practicable after the commencement of the Act, but the omission to execute it at once will not apparently entail any serious consequences. The legal estate appears to be, in fact, vested in the proper person by Part II. of 1st Schedule to L. P. A. (*ante*, p. 12), and the vesting instrument is really only required as a record of the fact, and the necessity for it will only really be brought home to the practitioner when a disposition of the settled land is contemplated. Except in favour of a purchaser of a legal estate without notice of any settlement, any attempted disposition under

S. L. A. by the tenant for life or statutory owner before the required vesting instrument is executed will not take effect, but will only operate as a contract. (S. L. A. s. 13.)

Special provisions as to infants' beneficial interests in land existing at the beginning of 1926 will be found in para. 3 of 2nd Schedule to S. L. A. (See *post*, p. 42.)

In addition to these provisions with regard to the method of settling land, the S. L. A. contains many new features which did not appear in S. L. A. 1882 to 1890, some of which are intended to facilitate dealings with settled land and others to protect the equitable interests of persons claiming under the settlement. An alphabetical summary of the chief alterations, with references to the sections in which they are contained, appears to be the easiest way of putting the practitioner on the track of these varied alterations. The sections referred to are dealt with in their numerical order under the Act, *post*.

An absolute owner in possession, subject to any estates, interests, charges, or powers of charging subsisting or capable of being exercised under a settlement, has the statutory powers. (Sect. 20 (ix); and see sect. 1 (1).) If there is no settlement, he may create one *ad hoc* to overreach certain equitable interests. (Sect. 21.)

Assignment of life interest.—Where a tenant for life assigns his beneficial interest after 1925, the assignee's consent will not be necessary to enable the tenant for life to exercise his powers. If the assignment was made for value before 1926, his consent will usually be required, but a purchaser is not concerned to see or inquire whether such consent has been obtained. (Sect. 104.) But if the tenant for life absolutely surrenders his life interest to the next remainderman, his powers cease. (Sect. 105.) And if by reason of assignment or otherwise he ceases to have a substantial interest in the settled land, and refuses unreasonably to exercise his powers, the Court may authorise the trustees to exercise them. (Sect. 24.)

Bankruptcy.—The legal estate of an estate owner in settled land will not vest in his trustee in bankruptcy (sect. 103), but the Court may take away his statutory powers and give them to the trustees of the settlement. (Sect. 24.)

Capital money.—The modes of investment or application of capital money are extended. (Sect. 73.)

Capital money must always be paid to two or more trustees even

if the settlement authorises one to receive it, unless the one is a trust corporation. (Sects. 18, 94.)

Charitable trustees are given S. L. A. powers. (Sect. 29.)

Compound settlements.—The difficulties occasioned in the past by compound and referential settlements are met by sects. 31 to 33.

Compromises, releases, licences, &c. by tenant for life.—Very wide powers as to compromising claims, releasing restrictions, varying leases, giving licences, apportioning rents, &c., are given to the tenant for life. (Sects. 58 to 61.)

Conveyance by tenant for life.—The tenant for life, in the exercise of his powers, has wider power of overreaching equitable interests than he formerly had under sect. 20 of S. L. A. 1882. (Sect. 72.)

Costs.—Where power is given by the Act to raise money for any purpose, this includes, and always has included, power to raise necessary costs. (Sect. 71.)

Court may sanction any transaction. (Sect. 64.)

Damages received for breach of covenant are made capital money. (Sect. 80.)

Dealings with tenant for life.—Sect. 12 of S. L. A. 1890, is replaced by the much wider provisions of sect. 68. *Inter alia,* the settled land can be leased to the tenant for life.

Dedication for streets, &c.—The powers in this direction are increased by sect. 56.

Determination of settlement.—When the settlement is spent, a deed of discharge has to be executed. This will protect subsequent purchasers of the land. (Sect. 17.) As to the duration of a settlement, see sect. 3.

Different settlements on the same limitations may be treated as an aggregate settlement. (Sect. 91.)

Dower.—A dowress was not a tenant for life within the S. L. A. 1882 to 1890, and it seems that she is not within the new Act. She is not mentioned in sect. 20, which deals with limited owners generally, though a husband entitled by the curtesy is mentioned, and sect. 1 (1) does not seem to be wide enough to cover the case. And the inference from sect. 1 (3) certainly appears to be that she was not intended to be treated as having the statutory powers. The sub-section provides that an infant is to be deemed to be entitled

in possession in spite of any subsisting right to dower if the dower has not been assigned by metes and bounds, and that such a right of dower is to be deemed to arise under the settlement which is deemed to have been made by the intestate. (See sect. 1 (2).) So that, if dower has not been assigned to her, the widow is clearly not within the Act, and her dower can be overreached by the statutory owner acting for the infant. The somewhat obscure proviso to sub-sect. (3) of sect. 1 to the effect that where dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of her husband's estate shall be deemed the settlement, is apparently applicable only when the heir is an infant. If the heir is of full age, apparently he would have the powers of a tenant for life by virtue of sect. 20 (1) (ix), and would be able to overreach the widow's right of dower.

The point is, of course, only important as regards deaths before 1926, for dower is abolished by sect. 45 of A. E. A.

Easements and restrictions.—Wider powers are given to a tenant for life of creating or reserving easements, &c., on any disposition under his powers. (Sect. 49.)

Forestry leases.—See sect. 48.

Gifts of water rights or land for public purposes.—See sects. 54 and 55.

Improvements.—Sect. 83 and the 3rd Schedule add to the list of authorised improvements. Money may be raised by mortgage for improvements. (Sect. 71.) The procedure to obtain an application of capital money in paying for an improvement is altered, no scheme being required. (Sect. 84.)

Incumbrances.—The power given by sect. 5 of S. L. A. 1882 to shift incumbrances with the incumbrancer's consent is extended so as to be exercisable at any time (sect. 69), and a new power to consolidate securities and vary the terms of an incumbrance, is conferred by sect. 70.

Infants.—See *post*, p. 39.

Lease of other land to tenant for life.—A tenant for life may accept a lease of land or mines, easements, &c., to be enjoyed with the settled land. (Sect. 53.)

Lease of settled land to tenant for life.—See sect. 68.

Leases in reversion may be made by a tenant for life. (Sect. 42 (1).)

Leases, terms of.—These are greatly enlarged by sect. 41.

Limited owners generally.—The scope of sect. 58 of S. L. A. 1882 is enlarged by sect. 20. *Inter alia*, a married woman entitled to a fee simple absolute, or term of years absolute, subject to restraint on anticipation, has the powers of a tenant for life.

Mansion-house, park, &c., can be sold, &c., without consent of trustees or leave of Court if the settlement is made or comes into operation after 1925, unless the settlement requires consent or leave to be obtained. (Sect. 65.)

Married woman of full age, being tenant for life or having the powers of a tenant for life, requires no consent of husband to exercise the statutory powers although the property is not separate property. (Sect. 25.) Where she is an infant, the provisions as to infants apply to her. (*Post*, p. 39.) If she is entitled to a fee simple absolute, or term of years absolute, subject to restraint on anticipation, the land is deemed settled land and she has the powers of a tenant for life. (Sects. 1 (1), 20.)

Mines.—*Any* authorised disposition may be made of surface apart from minerals, or *vice versâ*. (Sect. 50, amending sect. 17 of S. L. A. 1882.)

Mortgage may be made for improvements, and where money is raised for any transaction for which it may be raised, the costs of the transaction may be included. A mortgage may also be created to raise money required in connection with the extinction of manorial incidents, and conversion of perpetually renewable leaseholds. (Sect. 71.)

Options.—The power of a tenant for life to grant options is increased by sect. 51.

Personalty settled by reference to capital money.—See sect. 78.

Purchase, &c. of land subject to a rent, &c.—Land may be acquired on a purchase or exchange to be made subject to a settlement, although it is subject to a rent, easement, &c. (Sect. 74.)

Restoration of life estate.—The decision in *Re Constable*, (1919) 1 Ch. 178, is met by sect. 22.

Sale for a rent.—A sale may be made in consideration of a rent (sect. 39), and a re-grant of land so sold may be accepted (sect. 52), and the terms may be varied. (Sect. 59.)

Sale to a company for shares or debentures is in some cases authorised by sect. 39 (5).

Sale—part of purchase price left on mortgage.—On a sale in fee simple or for a term having at least 500 years to run, a tenant for life may contract that two-thirds or less of the purchase money shall remain on mortgage. No valuation is required. (T. A. s. 10 (2).)

Surrender of lease.—Money paid on surrender is to be capital money. (Sect. 52.)

Surrender to next remainderman will extinguish the powers of the tenant for life. (Sect. 105.)

Timber.—On a sale timber may be taken at a valuation, but the money will be capital. If it is inadvertently paid to the tenant for life, relief may in certain circumstances be granted. (Sect. 49 (2) and (3).)

Trustees, appointment and discharge of.—When a new trustee is appointed, or a trustee discharged, a supplemental vesting instrument must be executed to record the fact. (Sect. 35.)

Trustees' express power of sale will no longer be exercisable even with consent of tenant for life. (Sect. 108.)

Trustees' powers where no tenant for life.—Where there is no tenant for life, the trustees of the settlement can exercise the statutory powers, unless they are expressly conferred by the settlement on some other person of full age. (Sect. 23.)

Trustees, protection of.—Further protection is afforded to trustees in connection with investments by sect. 98.

Trustees, who are.—For the most part the provisions of the Acts of 1882 and 1890 as to who are the S. L. A. trustees are repeated by sect. 30, though there are one or two alterations making doubtful points clear. There is a new provision to the effect that if a settlement has arisen by a will or intestacy, the personal representatives will be trustees unless and until others are appointed. (As to compound and referential settlements, see sects. 31, 32 and 33.) There must always be two trustees to receive capital money, even though the settlement allows one to act, unless that one is a trust corporation. (Sects. 18, 94.)

Trusts for sale are taken out of S. L. A. by 10th Sched. sect. 1 of L. P. A. 1922. (See TRUST FOR SALE, *ante*, p. 22.)

Undivided shares.—Undivided shares in land are not within S. L. A. (See definition of "land" in sect. 117 (ix).) Un-

divided shares can only exist under cover of a trust for sale. (Sect. 36. And see UNDIVIDED SHARES, *post*, p. 37.)

6. *Administration of Estates.*

The statutory enactments relating to administration of the estates of deceased persons are consolidated by A. E. A. The new Act takes the place, *inter alia*, of Part I. of the Land Transfer Act, 1897, and sect. 30 of C. A. 1881, and sect. 12 of C. A. 1911. Except as otherwise expressly provided, it only applies to deaths after 1925. The following are the chief new points to notice in the Act:—

(1) *What property vests in personal representatives.*—The Act makes real estate vest in the personal representatives, as did Part I. of the Land Transfer Act, 1897, but the new Act explains more fully what is meant by "real estate." In this Part of the Act it includes chattels real, and land in possession, remainder or reversion, and every interest in or over land to which the deceased was entitled at his death, and also real estate held on trust (including settled land) or by way of mortgage, and real estate appointed by his will under a general power of appointment, and estates tail disposed of by his will under the power given by L. P. A. s. 176, *post*. But the interest of the deceased under a joint tenancy where another tenant survives is deemed to cease at his death, and so is the interest of a corporation sole in the corporation's real or personal estate. (See sect. 3 of A. E. A.)

(2) *Personal representatives have only joint authority.*—It seems from sect. 2 of A. E. A. that the authority of personal representatives over real estate, including leaseholds, whether the deceased was entitled beneficially or as trustee or mortgagee, is joint only, so that all the executors or administrators must join in conveying such property except that (1) executors who have not proved the will need not concur (sects. 2 and 8); (2) special executors appointed for settled land or a trust estate need not concur in any disposition of the other assets by the general personal representatives, nor need the latter concur in any dealing with the settled land or trust estate by the former (sects. 2, 13 and 24); and (3) the Court may otherwise order.

(3) *Withdrawal of renunciation.*—Where an executor who has renounced probate is allowed to withdraw his renunciation and prove the will, the previous acts of any other personal representatives who

have proved the will or taken out letters of administration will not be prejudiced. (A. E. A. s. 6.)

(4) *Transmission of office of executor.*—The law as to the chain of representation is made clearer by sect. 7 of A. E. A.

(5) *Estate of intestate vests in President.*—Until administration of an intestate's estate is granted his real estate, as well as his personal estate, vests in the President of the P. D. & A. Division. (A. E. A. s. 9.)

(6) *Probate and letters of administration.*—Fuller provisions are inserted as to the persons to whom probate or administration may be granted. The Court, in granting administration, is to have regard to the rights of all persons interested in the real and personal estate. (Sect. 10.) Administration with the will annexed may be granted to a legatee or devisee. (Sect. 10; and see sect. 19.) In regard to settled land, administration may be granted to the trustees of the settlement, and must be granted to them if willing to act (sect. 10), and probate may be granted to them specially limited to the settled land, even though the testator has not expressly appointed them executors. (Sect. 22.)

(7) *Administration bonds.*—Probate rules may be made for dispensing with sureties when the grant is made to a trust corporation, or to two or more individuals, or in any other proper case. (Sect. 11.)

(8) *Number of personal representatives.*—Representation is not to be granted to more than four persons in regard to the same property. If any beneficiary is an infant or a life estate arises under a will or intestacy, representation must be granted to a trust corporation or two individuals at least. (A. E. A. s. 12.)

(9) *Trust corporation.*—Probate or administration may be granted to a trust corporation alone or with another person, and is not to be granted to a syndic. Provision is made for vesting property, vested at the commencement of the Act in a syndic, in the corporation. (Sect. 14 of A. E. A.)

(10) *Infant executor.*—The appointment of an infant as executor will not transfer any interest in the deceased's property to him until he obtains probate after majority. (A. E. A. s. 20.)

(11) *Settled land representatives.*—Special provisions are made as to representatives in respect of settled land by sects. 10, and 22 to 23 of A. E. A.

(12) *Executor* de son tort.—Sect. 28 of A. E. A. gives a new reading of 43 Eliz. c. 8. It seems to give an executor *de son tort* a right of retainer.

(13) *Treasury Solicitor*, when obtaining a grant of administration for the Crown, is not to be required to deliver an affidavit, but merely signed particulars. (A. E. A. s. 30.)

(14) *Intestacy*.—Property not disposed of by will is to be held on trust for sale (A. E. A. s. 33), and entirely new provisions are made for the distribution of the proceeds of sale. (A. E. A. ss. 45 to 52.)

(15) *Insolvent estate*.—It will not be possible to administer in bankruptcy the estate of a person who dies after 1925, sect. 130 of the Bankruptcy Act, 1914, being repealed. But the bankruptcy rules which were imported into a Chancery administration of an insolvent estate by sect. 10 of the Judicature Act, 1875, are to apply to an administration out of Court. (A. E. A. s. 34, and Part I. of 1st Sched.)

(16) *Retainer and preference* by a personal representative will apply to *all* assets. (A. E. A. s. 34.) And see No. 12, above, *Executor de son tort*.

(17) *Order of application of assets*.—For the first time complete statutory provision is made as to the order in which the various properties are to be applied in payment of debts, &c. (See sect. 34 (3), and Part II. of 1st Sched. of A. E. A.) Locke King's Acts reappear in an amended form in sect. 35.

(18) *Assent by personal representative*.—Fuller and more satisfactory rules are laid down as to assents than were contained in Part I. of the Land Transfer Act, 1897. (See sects. 36 and 38 of A. E. A., *post*.)

(19) *Protection of purchaser*.—A purchaser, who takes a conveyance of a legal estate from a personal representative on the faith of a written statement by him that he has not given or made an assent or conveyance of a legal estate, is protected by A. E. A. s. 36 (6), unless the property has previously been conveyed to another purchaser deriving title mediately or immediately under the personal representative.

Notice that all the debts, &c. of the deceased have been discharged does not prevent a purchaser from the personal representative from obtaining a good title. (Sect. 36 (8).)

And a purchaser from the person to whom an assent has been given or a conveyance made may rely on the assent having been given or the conveyance made to the right person. (Sect. 36 (7). And see next paragraph.)

(20) *Revocation of probate or administration* will not affect a previous *bonâ fide* purchaser. (A. E. A. s. 37.) This confirms and extends *Hewson* v. *Shelley,* (1914) 2 Ch. 13.

(21) *Powers of management, sale, mortgage, &c.*—Very wide powers are given to personal representatives by sects. 39 and 40 of A. E. A.

(22) *Appropriation to satisfy legacy, &c.*—A full power of appropriation is given to the personal representative by sect. 41 of A. E. A.

(23) *Infant's legacy, &c.*—An executor or administrator may obtain a discharge in respect of any property to which an infant is absolutely entitled under a will or intestacy by appointing trustees and vesting the property in them. Protection is afforded, retrospectively, to a personal representative who has invested the infant's property in trust securities. (A. E. A. s. 42.)

(24) *Possession* of land may be given by a personal representative to a beneficiary pending assent. (A. E. A. s. 43.)

7. *Intestacy.*

The alterations in the law of intestacy are to be found in Part IV. of A. E. A. (Sects. 45 to 52.) These are set out, *post,* p. 333, with an explanatory summary, and it is only necessary to say here that, where the owner of property dies intestate as to that property after 1925, whether the property is real or personal, it will be held by the personal representatives on trust for sale (A. E. A. s. 33), and that entirely new provisions are made as to the beneficial succession to the property. Descent to the heir, the customs of gavelkind and borough English and any other special customs of descent, special occupancy, curtesy (except as regards an entailed interest not disposed of by will: L. P. A. s. 130 (4)), dower and freebench are all abolished, and so is escheat; the Statutes of Distribution and other statutes dealing with the beneficial succession to personalty on death intestate are repealed. The new succession, though to some extent modelled on the old Statute of Distribution of 1670, is in many respects different.

The new provisions only apply in the case of deaths after 1925. The practitioner will, therefore, for many years to come have to know three distinct systems of beneficial succession to an intestate's property, viz.: (1) The descent of realty on a death before 1926. (2) The devolution of personalty, including leaseholds, on a death before 1926. (3) The succession to any property, real or personal, on a death after 1925.

And even on a death after 1925 there are cases in which the person to take will be the heir as ascertained by the old law. (See *post*, p. 38.)

8. *Undivided Shares.*

Every conveyancer has from time to time realised the difficulties occasioned by land being vested in numerous co-owners. There are four distinct kinds of co-ownership at present recognised by the law, viz.: (1) Joint tenancy. (2) Tenancy by entireties. (3) Tenancy in common. (4) Coparcenary. After 1925 the only co-ownership which will be recognised as regards legal estates will be joint tenancy.

(1) *Joint tenancy.*—The majority of joint owners are trustees, and so far as they are concerned the Acts will make no difference to the nature of the tenancy. But where the joint tenants are beneficial owners, and the land is not settled land as defined by S. L. A., they will hold on the "statutory trusts," *i.e.*, on trust for sale (L. P. A. s. 35), though they will still remain joint tenants in equity. (L. P. A. s. 36.) Where the land is settled land, *i.e.*, where the persons entitled are entitled jointly in possession for their lives or for one of the numerous limited interests set out in sect. 20 of S. L. A., there will be no trust for sale, but the joint owners will together constitute the tenant for life and have all the statutory powers.

(2) *Tenancy by entireties.*—This is very rare, only existing where realty was conveyed to husband and wife before the Married Women's Property Act, 1882. Any tenancy by entireties existing at the end of 1925 is converted by Part VI. of 1st Schedule to L. P. A. into a joint tenancy. The husband and wife will therefore, if they are beneficial owners, hold on trust for sale, but without prejudice to any beneficial interest. Husband and wife, it may be added, will be treated as two persons for all purposes of acquisition of any interest in property under a disposition coming into operation after 1925. (L. P. A. s. 37.)

(3) *Tenancy in common.*—This will be impossible, as regards legal estates in land, after 1925. (L. P. A. s. 1 (6); sect. 34; S. L. A. s. 36.) Provision is made by the Acts (L. P. A. ss. 34 and 35; S. L. A. s. 36) whereby, if persons are beneficially entitled to land as tenants in common, the legal estate will be vested either in them as joint tenants on trust for sale, or in trustees for them, or in personal representatives, on trust for sale with, of course, full power to postpone the sale. The beneficial interest of the tenants is not in any way affected.

Similarly, Part IV. of 1st Schedule to L. P. A. makes provision to deal with tenancies in common existing when the Acts come into operation. In all cases the Schedule creates a trust for sale, vesting the land in the former tenants in common themselves as joint tenants, or vesting it or leaving it vested in trustees or personal representatives or S. L. A. trustees, or in certain cases in the Public Trustee temporarily, on the "statutory trusts," *i.e.*, on trust for sale. The details are worked out minutely, and will be found *post*, p. 125.

Special provisions are made as to party structures and open spaces. (L. P. A. s. 38; 1st Sched. Part V.)

(4) *Coparcenary.*—This will be impossible at law on deaths occurring after 1925, for descent to the heir is abolished (A. E. A. s. 45), and a trust for sale created of realty as to which the owner dies intestate. (A. E. A. s. 33.) But there will still be cases where two or more persons may be entitled to an equitable interest as together constituting the heir. (a) An entailed interest not disposed of by the will of the tenant in tail will, as regards the equitable interest, descend to the heir of the body as ascertained by the old law. (L. P. A. s. 130 (4).) (b) And sometimes on the death of a lunatic the land will descend to his heir according to the old law. (A. E. A. s. 51 (2).) (c) Also, sect. 131 of L. P. A. which abolishes the rule in *Shelley's Case* and provides, in effect, that where land is limited to A. for life with remainder to his heirs or the heirs of his body, his heir will take as purchaser, makes the particular person to take ascertainable by the old law. In such a case, however, as the heir takes as purchaser, two or more persons together constituting the heir could not strictly be said to be "coparceners," for coparcenary only arises on a descent. In these three cases, also, there will be a trust for sale.

As regards estates in coparcenary existing at the commencement of the Act, if the legal estate is still vested in the personal repre-

sentatives, they will hold on the statutory trusts, but if it is in the coparceners themselves, it will vest in them as joint tenants on the statutory trusts if they are not more than four in number and are all of full age and none has incumbered his share; in other cases it will vest in the Public Trustee on the statutory trusts, pending the appointment of other trustees.

A trust for sale being thus created in every case, the Partition Acts, 1868 and 1876, under which a sale could be ordered by the Court, are rendered unnecessary, and are repealed by L. P. A. 1922, 3rd Schedule, s. 1 (10). Provision is made by sect. 28 (3) of L. P. A. whereby, if the persons entitled beneficially to undivided shares are absolutely entitled, the trustees may, with their consent, partition the land among them.

9. *Infants.*

Difficulties are often occasioned in practice by the fact that a legal estate is vested in an infant. The Acts solve the difficulty by not allowing such a thing to happen after 1925. The provisions of the Acts are a little complicated on this point, but the effect of them appears to be as follows:—

Infant as beneficial owner.—After 1925 a legal estate in land will not be capable of being held by an infant (L. P. A. s. 1 (6)), and the expression "estate owner" in the Acts, therefore, does not include an infant. (L. P. A. s. 205 (v).) But the infant's beneficial interest will not be affected (L. P. A. s. 19; S. L. A. s. 26 (6)), and there is nothing in the Acts to prevent him from holding an equitable estate in land. (S. L. A. s. 27 (2).) If, however, he becomes entitled to share in an intestate's estate, he will not get an absolute vested interest until majority or marriage during infancy, so that on his dying unmarried during infancy his interest in the estate will terminate. (A. E. A. s. 47; and see sect. 51 (3).)

The proper method of giving an infant an interest in land by an instrument operating *inter vivos* after 1925 will be by means of a settlement or a trust for sale, vesting the legal estate in trustees. Where there is a trust for sale, the trustees will have full powers of dealing with the land. (L. P. A. s. 28.) If there is no trust for sale, the land will be settled land, whether the infant's beneficial interest is a fee simple absolute in possession or a term of years absolute in possession or a limited interest only (S. L. A. ss. 1 and 2),

and the trustees of the settlement will have full powers under sect. 26 of S. L. A.

If an attempt is made by a conveyance *inter vivos* executed after 1925 to convey a legal estate in land to an infant for his own benefit, either alone or jointly with other infants, the conveyance will operate merely as an agreement for valuable consideration to make a settlement in the authorised manner and meantime to hold on trust for the infant. (S. L. A. s. 27.) If the conveyance is made to an infant and a person of full age jointly, the latter will take the legal estate alone and will hold on the statutory trusts, *i.e.*, on trust for sale (L. P. A. s. 35) for the benefit of himself and the infant as joint tenants in equity. (L. P. A. s. 19 (2).)

No difficulty will be occasioned by a devise to an infant or by his becoming entitled to land on an intestacy. The legal estate will vest in the personal representatives. (A. E. A. s. 1.) If the devise is to the infant absolutely the personal representatives can (unless it is devised to trustees for the infant) either retain the land and vest it in the infant when he attains majority, in which case they will, during the minority, have full powers of management and disposition (A. E. A. s. 39; S. L. A. s. 26 (1))—in fact, they appear to be overwhelmed with powers—or, if they do not desire to keep the land themselves, they can appoint two or more trustees or a trust corporation and vest the land in them, and the trustees or trust corporation will have full powers of management and disposition. (A. E. A. s. 42.) On the other hand, if the devise is to the infant for life or for any other limited interest, and the testator has appointed S. L. A. trustees, the personal representatives must, after they have finished their duties as personal representatives and the death duties have been paid or provided for, vest the land in the S. L. A. trustees if so required. (S. L. A. ss. 6, 8 and 26.) And the position will be the same if, on the death of a person entitled to a limited interest under a settlement of land, an infant becomes beneficially entitled to an interest in the settled land. (S. L. A. ss. 7, 8 and 26.)

Where the infant becomes entitled on an intestacy, the personal representatives will hold on trust for sale and will have the same option as where there is a devise to an infant absolutely; they may either retain and exercise all the statutory powers themselves, or appoint a trust corporation, or two or more trustees to do so. (A. E. A. ss. 39 and 42; S. L. A. s. 26.) A settlement is deemed to have been made by the intestate. (S. L. A. s. 1 (2).)

The S. L. A. makes it clear that the provisions of the Act relating to infants apply to married women infants, and that they apply although the infant's interest is a leasehold interest, whether at a rent or not. Sect. 41 of C. A. 1881, under which an infant's land was deemed a settled estate within the Settled Estates Act, 1877, was repealed by L. P. A. 1922, s. 53 (3), and the Settled Estates Act, 1877, was itself repealed by sect. 70 (4) of L. P. A. 1922. These repeals are repeated by L. P. A. and S. L. A.

When an infant attains majority, he is entitled to call for a conveyance from the persons in whom the land is vested, if his interest is absolute, or for a vesting instrument, if he is a tenant for life or other limited owner. (S. L. A. s. 7.)

Infant as trustee.—An infant cannot be appointed a trustee; such an appointment will be void (L. P. A. s. 20) and a new trustee can be appointed to fill the vacancy (T. A. ss. 36 and 41), and the necessary vesting declaration made (T. A. s. 40) or vesting order obtained. (T. A. ss. 44, 51.) Any conveyance of a legal estate to him on trust will be inoperative to pass any estate to him, and if he is the sole trustee the conveyance will be treated as a declaration of trust (L. P. A. s. 19 (4)), but if the conveyance is to the infant and another person of full age the legal estate will vest in the latter alone. (*Ibid.* sect. 19 (5).)

Infant as personal representative.—Nor can an infant act as executor during his minority. If he is appointed executor, the appointment will not vest any property in him or constitute him personal representative for any purpose until he attains majority and obtains probate. (A. E. A. s. 20.)

Infant as mortgagee.—Nor, again, can a legal mortgage of land be made or transferred to an infant. An attempt to make or transfer such a mortgage to him will, if he is the sole mortgagee, only operate as a contract to convey to him at majority and meantime to hold any beneficial interest in the mortgage debt on trust for the persons intended to be benefited; if there is another mortgagee of full age, the mortgage or transfer will operate as if the infant had not been named, but without prejudice to any beneficial interest of the infant. (L. P. A. s. 19 (6).)

Transitional provisions.—The Acts naturally have to provide for the numerous cases in which legal estates will be vested in an infant at the end of 1925 and also for the cases in which, by virtue of the provisions of the Acts, he would have the legal fee simple or term of

years absolute vested in him on the 1st January, 1926, if he were of full age, *i.e.*, where he is beneficially entitled to a life estate in possession or to one of the limited interests in possession set out in sect. 20 of S. L. A., the land not being vested in trustees for sale or personal representatives at the commencement of the Act. The legal estate has to be divested from the infant and vested in the proper person. This is done by Part. III. of 1st Schedule of L. P. A. and para. 3 of 2nd Schedule of S. L. A. The provisions of the Schedules follow much the same lines as those already set out with regard to conveyances to infants after 1925. The effect is as follows:—

(1) *Infant beneficial owner.*—Where the infant is entitled to a legal fee simple or term of years absolute, either alone or jointly with other infants, the legal estate will vest in the Public Trustee, pending appointment of S. L. A. trustees, unless persons have been appointed to act for the infant under sect. 60 of S. L. A. 1882. If his interest is only a life estate or one of the other limited interests set out in sect. 20 of S. L. A., there will probably be trustees of the settlement, or some persons appointed under sect. 60 of S. L. A. 1882; if so, the legal estate will vest in them. If there are none, it will vest in the Public Trustee, pending the appointment of S. L. A. trustees. Where the infant is entitled in possession jointly with another person of full age to a legal estate in fee simple absolute or for a term of years absolute, the whole legal estate will vest in the other on the statutory trusts, *i.e.*, on trust to sell. If, however, the estate is an estate for life or one of the limited estates mentioned in sect. 20 of S. L. A., the owner of full age will be entitled to take the whole legal estate and hold as tenant for life under S. L. A., and a vesting instrument will have to be executed accordingly.

(2) *Infant trustee, personal representative or mortgagee.*—Here, if there is no other trustee or personal representative or mortgagee of full age, the legal estate will vest in the Public Trustee, pending the appointment of trustees. If there is another trustee, &c. of full age, the legal estate will vest in him.

10. *Mortgages.*

Form of mortgage.—The changes effected by L. P. A. with regard to mortgages are considerable, but for the most part they are changes of form and not of substance, and they do not present any great

difficulty. The object of the changes is to ensure that an estate owner shall still remain an estate owner although he has created a legal mortgage. To be an estate owner he must have a legal estate. This he has not got under the present practice of conveying the legal fee simple to the mortgagee in a mortgage of freeholds. The mortgagor retains only an equity of redemption. Mortgages of leaseholds, also, are not uncommonly made by assignment of the whole lease to the mortgagee, though it is more usual to effect them by the creation of a sub-term derived out of the mortgagor's lease, leaving the mortgagor the legal owner of the lease.

After 1925 it will be impossible to vest in the mortgagee anything more than a term of years, whether the property mortgaged is freehold or leasehold. (L. P. A. ss. 85, 86.) Thus, the legal fee simple absolute or the term of years absolute, as the case may be, will remain in the mortgagor, and he will, therefore, be an estate owner. The mortgagee also will be an estate owner, having a legal term of years.

Legal mortgages of freeholds existing at the end of 1925 are converted into the new form of mortgage by demise by Part VII. of 1st Schedule of L. P. A. Mortgages of leaseholds by assignment existing at the end of 1925 are converted into mortgages by subdemise by Part VIII. of the same Schedule. Provision is made for vesting in the right person the fee simple or the term of years, as the case may be, thus taken from the mortgagee. These provisions are set out *post*, p. 130. Existing mortgages of leaseholds by subdemise continue as they were.

A by-product of this change is that second and subsequent mortgages become legal and not merely equitable mortgages. Each mortgagee will have a legal term of years, the second mortgagee's term being one day longer than that of the first mortgagee. But it is not essential that the second mortgagee's term should be longer. A legal term may be created to take effect in reversion expectant on a longer term, and this rule is confirmed by sect. 149 (5) of L. P. A. Second and subsequent mortgages existing at the end of 1925 will be unexpectedly presented with a legal estate, but the gift is somewhat tempered by the provisions of para. 6 of Part VII. and para. 5 of Part VIII. of 1st Schedule that a mortgage affecting a legal estate made before 1926 which is not protected by a deposit of title deeds or by registration as a land charge (see sect. 10 of L. C. A.) shall not, as against a purchaser in good faith without notice thereof, obtain

any benefit by being converted into a legal mortgage by the Schedule. These second and subsequent mortgages are called "puisne mortgages" in the Acts.

The L. P. A. introduces a new form of legal mortgage, called a "charge by way of legal mortgage." (Sect. 87.) It puts the chargee in the same position as if a legal mortgage in the authorised form had been made to him. A form of charge is given in the 5th Sched. Form No. 1. There appears to be no special advantage in using it.

Equitable mortgages by deposit of the title deeds relating to the legal estate can still be created (L. P. A. s. 13) and do not require registration as land charges (L. C. A. s. 10), nor can they be overreached by the estate owner creating an *ad hoc* trust for sale under sect. 2 of L. P. A. or an *ad hoc* settlement under sect. 21 of S. L. A. Equitable charges created without deposit of documents require registration under sect. 10 of L. C. A. as being "general equitable charges."

Mortgagee's remedies and powers.—The change in the nature of the mortgagee's estate does not prejudice his remedies and powers. After 1925 a legal mortgagee will still be entitled to take possession (L. P. A. s. 95 (4)), and when in possession to cut and sell timber (sect. 101 (1) (iv)) and grant leases or accept surrenders of leases. (Sects. 99 and 100.) As to the operation of the statutory leasing powers, see sect. 8 of L. P. A. And if he obtains a title against the mortgagor by adverse possession, *i.e.*, by holding possession for twelve years without giving any written acknowledgment of the mortgagor's right, he may by deed declare that his term is enlarged into a fee simple under the power of enlargement given by sect. 153 of L. P. A. (L. P. A. s. 88 (3)), or, if it is a mortgage of leaseholds, he may by deed vest the mortgagor's term in himself. (L. P. A. s. 89 (3).) The mortgagee will still be entitled to appoint a receiver (sect. 101 (1) (iii)), and, so long as the receiver is acting, to grant leases and accept surrenders of leases, which power he may delegate to the receiver. (Sects. 99 and 100.) As to the position of the receiver, see sect. 109. He has also the old power of insurance at any time after the date of the mortgage deed. (See sect. 101 (1) (ii) and sect. 108.)

Further, where a mortgagee sells under his statutory or express power of sale, he will have power to convey the legal fee simple if

his term was created out of a fee simple (L. P. A. s. 88 (1)), or the leasehold reversion affected by the mortgage if his mortgage term was created out of a term of years absolute. (*Ibid.* sect. 89 (1).) And if a sale is directed by the Court in a foreclosure or redemption action, the Court may make a vesting order conveying the mortgaged property to a purchaser or appoint a person to do so. (*Ibid.* sect. 91 (7).) The mortgagee's statutory power of sale is conferred by sect. 101 (1) (i), and regulated by sects. 103 *et seq.* For the most part these sections reproduce the familiar law of the Conveyancing Acts. His power of sale is one of the few *legal* powers of appointment left by L. P. A. (See L. P. A. s. 1.)

Provision is also made by the Act to enable the mortgagee to obtain the whole legal estate of the mortgagor on foreclosure absolute. The order for foreclosure absolute will, in fact, operate to vest in him the fee simple absolute or the leasehold reversion affected by the mortgage. (L. P. A. ss. 88 (2) and 89 (2).)

Reconveyances will be unnecessary where a mortgage is paid off after 1925. An endorsed receipt will be sufficient. (See sect. 115 of L. P. A.) And the mortgage term, being a satisfied term, will cease unless kept alive at the instance of a *limited* owner. (*Ibid.* sect. 116.)

Transfers of mortgages are dealt with by sect. 114 of L. P. A. After 1925 it will be sufficient to execute a deed transferring the mortgage or the benefit of the mortgage without any express transfer of the legal estate. This reverses the law of *Re Beachey, Heaton* v. *Beachey*, (1904) 1 Ch. 67.

Sect. 112 reproduces the provision of sect. 13 of C. A. 1911, which prevents a purchaser from being affected with notice of a trust by reason of the stamp on a transfer of a mortgage being 10*s.* only. And sect. 113 contains a much more important general provision absolving a person dealing in good faith with a mortgagee, or with the mortgagor after discharge of the mortgage, from any duty to inquire into the trusts of mortgage money even though he has notice of the trust.

Consolidation of mortgages is not affected by the Acts. The right to consolidate may still be reserved by the mortgage deeds or one of them. (L. P. A. s. 93.)

Tacking, however, is abolished by sect. 94 of L. P. A. except as regards further advances made by a prior mortgagee without notice

of a subsequent mortgage, or even with notice if he has agreed to make further advances. This extends the right to tack, for under the law of *West* v. *Williams*, (1899) 1 Ch. 132, a mortgagee could not tack a further advance made with notice of a second mortgage even though he had agreed to make the advance. A "puisne mortgagee" must, therefore, still remember to give notice of his mortgage to any prior mortgagee and must not be content with registering his mortgage as a land charge under sect. 10 of L. C. A., for though registration is usually equivalent to notice (L. P. A. s. 198), registration will not prevent tacking of further advances if the mortgage was not registered at the date of the original advance (which is not probable, as *ex hypothesi* it is a subsequent mortgage), or when the prior mortgagee made his last search, whichever last happened. (Sect. 94 (2).)

11. *Abolition of Copyhold and Customary Tenure, and Extinguishment of Manorial Incidents.*

These will be found dealt with fully, *post*, pp. 66 *et seq.*, 76 *et seq.*

12. *The Conversion of Perpetually Renewable Leaseholds, and Leaseholds for Lives.*

The provisions of the Acts which effect this conversion will be found *post*, pp. 91 to 96.

13. *Registration of Title.*

See *post*, p. 353.

14. *Miscellaneous Amendments of Conveyancing and other Acts.*

Scattered up and down the Consolidating Acts—especially in L. P. A.—are countless amendments of the law of property and conveyancing. They are all dealt with in their sectional order in the Acts, *post*, but it will be convenient to call attention to them shortly here in alphabetical order, so as to enable the practitioner or student to see at a glance the chief alterations effected by the Acts, and to know to which Act and which section he must refer to discover exactly what alteration has been made.

ABSTRACT OF TITLE.

Equitable interests which will be overreached by the conveyance should not be set out. (L. P. A. s. 10.)

A purchaser of a legal estate in settled land is not concerned with the trust instrument as a rule. (S. L. A. s. 110.)

Length of title.—Thirty years instead of forty years. (L. P. A. s. 44 (1).) Some alterations are made by sect. 45 (1) of L. P. A. in sect. 3 (3) of C. A. 1881 as to inquiries into the title prior to the commencement of the abstract.

Specimens of abstracts.—Five very useful specimen epitomes of abstracts of title are given in the 6th Schedule to L. P. A. (Sect. 206 (2).) They show how abstracts are to be framed after 1925 and what documents are to be abstracted, and what documents and facts which at present have to appear may be omitted. A careful study of these abstracts will very materially assist the practitioner to understand the Acts. They are set out *post*.

ACCUMULATION OF INCOME.

Accumulations Acts, 1800 and 1892, are replaced by sects. 164 to 166 of L. P. A. with slight alterations. Sect. 165 settles a doubtful point by enacting that where accumulations are made during minority under any statutory power (*e.g.*, under sect. 31 of T. A.) or under the general law, the period of accumulation is not to be taken into account in deciding whether an express trust for accumulation is good or bad. Also the exception as to accumulation for portions is made clearer, and the prohibition on accumulation for the purchase of land only beyond the minority of the person who would, if of full age, be entitled to receive the income is not to apply to accumulations to be held as capital money under S. L. A.

ADVANCEMENT.

A power of advancement is implied in the case of trusts constituted or created after 1925. (T. A. s. 32.)

ATTORNMENTS.

The provisions of 4 & 5 Anne, c. 3, ss. 9 and 10, and sect. 11 of the Distress for Rent Act, 1737, are reproduced in modern form by sect. 151 of L. P. A.

BANKRUPTCY.

A bankruptcy petition filed after 1925 must be registered in the Land Registry as a pending action (L. C. A. s. 2) in order to bind

a purchaser of a legal estate for money or money's worth without notice of an available act of bankruptcy. (*Ibid.* s. 3.) And a receiving order in bankruptcy made after 1925 must be registered as a writ or order affecting land (*ibid.* s. 6) for the same purpose. (*Ibid.* s. 7.)

An official search will be obtainable as to bankruptcy registrations at the Land Registry. (L. C. A. s. 17.)

Administration of an insolvent estate of a deceased person in bankruptcy is abolished, sect. 130 of Bankruptcy Act, 1914, being repealed by A. E. A. s. 56, and 2nd Schedule. Certain bankruptcy rules apply to administrations in Chancery or out of Court. (*Ibid.* s. 34.)

The legal estate in settled land does not vest in the trustee in bankruptcy of an estate owner until the latter is absolutely beneficially entitled. (S. L. A. s. 103.)

BASTARD.

A bastard can dispose of realty or leaseholds by his will. (L. P. A. s. 178.)

BENEFICES.

Advowsons are within L. P. A., but the restrictions imposed on dealings with them by the Benefices Act, 1898, and the Benefices Act, 1898 (Amendment), Measure, 1923, are not affected. (L. P. A. s. 201.)

CHARITY.

Conveyance of land to a charity will not require two witnesses after 1925, nor will it have to be registered at the Central Office; but it will have to be sent to the Charity Commissioners to be recorded, except in certain cases. (S. L. A. s. 29.)

Trustees have the powers of a tenant for life. (S. L. A. s. 29.)

CHATTELS.

Where chattels are held in undivided shares, persons interested in a moiety or more may obtain an order for division. (L. P. A. s. 188.)

COMMONS.

Public access to.—See sect. 193 of L. P. A.

Restriction on inclosure of.—See sect. 194 of L. P. A.

COMMORIENTES.

A new presumption is created that, where two persons die together, the younger survives the elder in the absence of evidence of survivorship. (L. P. A. s. 184.)

CONTINGENT INTEREST.

Advancement out of.—See T. A. s. 32.

Intermediate income of.—Contingent and future testamentary gifts are to carry the intermediate income from the death if testator died after 1925, except where the income is otherwise disposed of. (L. P. A. s. 175. And see sect. 31 of T. A.)

Management of land.—Where a person is contingently entitled to land under an instrument coming into operation after 1925, the trustees of the settlement have powers of management. (S. L. A. s. 102.)

CONTRACT BY CORRESPONDENCE.

The Lord Chancellor may prescribe forms and conditions of sale of land which will apply unless a contrary intention is expressed. (L. P. A. s. 46.)

CONVEYANCE.

By A. to A.—After 1925, a person may convey land to or vest land in himself. (L. P. A. s. 72 (3).)

By A. and B. to B.—Any property may be so conveyed, and has always been capable of being so conveyed. (L. P. A. s. 72 (4).) Cp. *Covenants, post,* p. 50.

Deed necessary.—Conveyances of land or any interest in land must be by deed, except in certain specified cases. (L. P. A. s. 52.)

Forms.—See L. P. A. 5th Schedule.

Method of conveying.—Lands are to lie in grant only. The possibility of conveying by feoffment with livery of seisin is abolished by sect. 51 of L. P. A. replacing sect. 2 of R. P. A. 1845. As to the necessity of a deed, see sect. 52 of L. P. A.

CONVICT.

The provisions of the Forfeiture Act, 1870, remain in force. (L. P. A. s. 7.)

CORPORATION.

Useful provisions as to the vesting of property in a corporation sole and its devolution on the death of the corporation sole are contained in sect. 180 of L. P. A. (See also sect. 3 (5) of A. E. A.)

See also sect. 181 of L. P. A. as to dissolution of a corporation.

As to execution of instruments by or on behalf of corporations, see sect. 74 of L. P. A.

No words of limitation are necessary in conveying to a corporation sole after 1925. (L. P. A. s. 60 (2).)

Probate or letters of administration may be granted to a trust corporation. (A. E. A. s. 14.)

A trust corporation can act as sole trustee, even for S. L. A. purposes. (S. L. A. ss. 30, 94.)

COVENANTS.

Joint covenantees.—A covenant with two or more jointly is deemed made with each and with the survivor or survivors. (L. P. A. s. 81.)

For title.—The policy of sect. 7 of C. A. 1881, as to implying usual covenants for title by the use of certain words, is extended by sects 76 and 77 of L. P. A., so as to include a conveyance by a receiver of a defective and an assent by a personal representative, and so as to imply the covenants as to payment of rent usually inserted when freehold land subject to a rent-charge is mortgaged, or where part of land subject to a lease or to a rent-charge is conveyed for valuable consideration or by way of mortgage.

Running with the land.—The provisions of sect. 58 of C. A. 1881, with regard to the benefit of covenants relating to land, have been redrafted (L. P. A. s. 78); and a new section—L. P. A. s. 79—inserted with regard to the burden of such covenants.

Running with the reversion.—See sects. 140 to 142 of L. P. A.

To bind land.—Sect. 59 of C. A. 1881 is put in an up-to-date form by sect. 80 of L. P. A.

With self and others.—Such covenants will not be void after 1925, whenever entered into. (L. P. A. s. 82.) Cp. S. L. A. s. 68 as to leases to a tenant for life.

DEED.

Construction.—See sect. 61 of L. P. A.

Description.—No need to call an indenture "This Indenture." (L. P. A. s. 57.)

Signing.—An individual executing a deed after 1925 must sign or place his mark against the deed: sealing alone will not be sufficient. (L. P. A. s. 73.) As to execution by or on behalf of a corporation, see L. P. A. s. 74.

DEEDS OF ARRANGEMENT.

Re-registration in Land Registry is required every five years if the deed affects land. The whole of 1926 is allowed to effect any necessary re-registration of deeds executed before the commencement of the Act. (L. C. A. s. 8.)

DEPOSIT.

When the Court refuses to grant specific performance of a contract or in any action for the return of a deposit, the Court may order repayment of any deposit. (L. P. A. s. 49 (2).)

DISTRESS, POWER OF.

Distress as indemnity against rent.—An instrument giving a power to distrain by way of indemnity against a rent, or against the breach of any covenant or condition in relation to land, is not and never has been a bill of sale. The benefit of such a power is deemed to be annexed to the land intended to be benefited, and may be enforced by the estate owner for the time being although not expressly assigned to him. (L. P. A. s. 189.)

A power to distrain by way of indemnity against a rent is not within the perpetuity rule. (L. P. A. s. 162 (1); s. 190 (8).)

Powers of entry and distress are implied in certain cases where part of land subject to a rent is conveyed without any legal apportionment of the rent. (L. P. A. s. 190.)

DOUBLE POSSIBILITY.

The so-called rule against double possibilities is abolished as regards instruments coming into operation after 1925. (L. P. A. s. 161.)

DYING WITHOUT ISSUE.

Sect. 10 of C. A. 1882 is replaced by sect. 134 of L. P. A., and made to apply not only to equitable interests in land but also to any interest in other property, not being an entailed interest, so that a gift over on death without issue becomes void on any issue attaining twenty-one years of age, although the property is pure personalty.

EASEMENTS.

Easements may still exist at law, but only if they are for an estate in fee simple absolute in possession, or a term of years absolute. All others are equitable interests only (L. P. A. s. 1 (2) and (3)), and if created after 1925 must be registered as land charges. (L. C. A. ss. 10 and 13.)

Legal easements may be created after 1925 by reservation in a conveyance without any execution of the conveyance by the grantee of the estate. (L. P. A. s. 65.)

A legal easement will enure for the benefit of the land to which it is intended to be annexed, and may be held by two or more persons in common. (L. P. A. s. 187.)

ENLARGEMENT OF LONG TERMS.

After 1930 it will be possible sometimes to enlarge a long term into a fee simple although a money rent was originally reserved. For, by sect. 153 of L. P. A., a rent not exceeding 1*l.* a year which has not been collected or paid for twenty years is to be deemed to have ceased to be payable, provided of the said period at least five years have elapsed after 1925. Also a married woman will be able to enlarge the term without her husband's concurrence, even though the lease is not her separate property.

ENTAILED INTEREST.

Important alterations are made with regard to estates tail by sect. 130 of L. P. A. The provisions of that section are dealt with fully, *post*, under the Act.

See also sect. 133 as to the abolition of enrolment of disentailing assurances, and sect. 176 as to the power of a tenant in tail in possession to make a will. If he makes a will, the equitable interest in the land will devolve on his personal representatives (A. E. A. s. 3), and be subject to his debts. (A. E. A. s. 32 (1).)

An instrument by which land is limited in trust for an entailed interest in possession is a settlement within S. L. A. (S. L. A. s. 1 (1) (ii)), and the tenant in tail has the powers of a tenant for life. (S. L. A. s. 20 (1) (i).) The instrument creating it, if it comes into operation after 1925, will be deemed a trust instrument, and a vesting instrument must be executed. (S. L. A. s. 9.) See also S. L. A. ss. 1 (5) and 11 (1).

ENTRY, RIGHTS OF.

Rights of entry exercisable over or in respect of a legal term of years absolute or annexed for any purpose to a legal rent-charge are legal interests. All others are equitable. (L. P. A. s. 1 (2) (e).)

Rights of entry affecting a legal estate (a) are assignable by deed, and (b) can be disposed of by will, and (c) after 1925 may be made exercisable by any person and the persons deriving title under him, but, in regard to an estate in fee simple (not being a rent-charge held for a legal estate), only within the period authorised by the perpetuity rule. (L. P. A. s. 4.) See also sect. 162 as to certain rights of entry being outside the perpetuity rule.

EQUITABLE PRIORITIES.

Dearle v. Hall rule.—Very important alterations are contained in sect. 137 of L. P. A. *Inter alia,* the rule is extended to interests in land, and notice must be written. The section is dealt with *post*. See also sect. 138.

FRAUDS.

Frauds, Statute of.—That part of sect. 4 of the statute which deals with contracts for the sale of land is replaced by sect. 40 of L. P. A., and sects. 1, 2, 3, 7, 8 and 9, which require writing for the creation of interests in land or of a trust of land or for the assignment of an interest in property held on trust, with some exceptions, are replaced in a modern form by sects. 53 to 55 of L. P. A.

FRAUDULENT CONVEYANCES.

Frauds on creditors.—13 Eliz. c. 5 reappears in a new form in sect. 172 of L. P. A.

Frauds on purchasers.—27 Eliz. c. 4, as amended by the Voluntary Conveyances Act, 1893, will be found in sect. 173 of L. P. A.

GLEBE LAND.

An incumbent selling glebe under any statutory provision may sell it for a rent-charge. (L. P. A. 1922, s. 43 (8).)

HEIR AS PURCHASER.

Where by an instrument coming into operation after 1925, real or personal property is limited to the heir of a deceased person as a purchaser, the heir must be ascertained according to the old law. (L. P. A. s. 132. And see L. P. A. s. 131, and A. E. A. s. 51 (1).)

INCLOSURE ACTS.

An order for apportionment of a charge on land under sects. 10 to 14 of the Inclosure Act, 1854, may be made on the application of any person interested in the charge without the concurrence of any other person. (L. P. A. s. 192.)

INCUMBRANCES.

The Court's power to declare land free from an incumbrance on a sale is extended to an exchange and to other land affected by the incumbrance as well as the land sold or exchanged. (L. P. A. s. 50.)

INFANTS.

In addition to the provisions referred to *ante,* p. 39, with regard to the inability of an infant to hold a legal estate in land, there are some further provisions in the Acts affecting infants.

Death unmarried.—An infant who dies unmarried loses his interest in an intestate's estate. (A. E. A. s. 47.) And if he was equitably entitled under a settlement or will to a vested estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, he will be deemed to have had an entailed interest—which accordingly will be at an end on his death without issue. (A. E. A. s. 51 (3).)

Interests under a will or intestacy.—As to the power of a personal representative to discharge himself by appointing two trustees or a trust corporation to receive property to which an infant is absolutely entitled under a will or intestacy, see sect. 42 of A. E. A.

Maintenance and advancement.—Wider powers as regards applying income for maintenance and a new power of applying capital are given by sects. 31 and 32 of T. A.

Management of land.—See sect. 102 of S. L. A., which applies even if the infant's interest is contingent.

Receipts for income and accumulations can be given by married infants. (L. P. A. s. 21; A. E. A. s. 47 (1) (ii); T. A. s. 31 (2).)

INSURANCE.

Mortgaged property.—A slight alteration is made as regards the mortgagee's statutory power of insurance by sect. 108 of L. P. A. See the section, *post*, under the Act.

On a sale.—Sect. 47 of L. P. A. deals with the application of insurance money on completion of a sale or exchange. Whether it will have much effect in practice appears to be doubtful. The section is discussed, *post*, under the Act.

Trust property.—New and lengthy provisions are contained in sect. 20 of T. A. as to the application of insurance money where the policy has been kept up under any trust, power or obligation. The effect of the section is given under the Act, *post*.

LEASES.

Enlargement of long terms.—See *ante*, p. 52.

Forfeiture, restrictions on and relief from.—The statutory provisions are now to be found in sect. 146 of L. P. A. A covenant not to assign or underlet or part with possession is brought within these provisions.

See also sect. 147 of L. P. A. as to relief against notice to effect decorative repairs.

Interesse termini.—The doctrine is abolished. (L. P. A. s. 149 (1) and (2).)

Leases for lives are converted into terms for ninety years. (L. P. A. s. 149 (6).)

Reversion, assignment of.—Considerable alteration is made in sects. 10 to 12 of C. A. 1881, replaced by sects. 140 to 142 of L. P. A., with regard to the position of an assignee of the reversion or part of it.

Reversionary leases are made void in certain cases. (L. P. A. s. 149 (3).)

Statutory leasing powers.—As to the exercise of such powers, see L. P. A. s. 8.

LIMITATION OF ACTIONS.

The operation of the Statutes of Limitation is not affected by Part I. of L. P. A. (Sect. 12.)

LIMITATION, WORDS OF.

See L. P. A. s. 60, and, as to entailed interests, sect. 130. See also sect. 131 as to *Shelley's Case*.

LUNATICS AND DEFECTIVES.

Conveyances on their behalf.—See sect. 22 of L. P. A.

Court's power to settle their beneficial interests.—Very wide powers are given to the Court in this behalf by sect. 171 of L. P. A.

Intestacy.—The old law of descent applies to realty of a lunatic or defective in certain circumstances. (See A. E. A. s. 51 (2).)

MARRIED WOMEN.

Acknowledgment will never be necessary after 1925. (L. P. A. s. 167.)

Disclaimer may be made without the husband's concurrence where the property would, if the wife took it, be her separate property, or if it is a trust estate. (L. P. A. s. 168.)

Infant married woman may give receipts for income and accumulations. (L. P. A. s. 21; A. E. A. s. 47 (1) (ii); T. A. s. 31 (2).)

Trust estate.—The husband's concurrence is not necessary to a conveyance or disclaimer or assent by a married woman trustee. (L. P. A. s. 170.)

NOTICE TO QUIT.

Notice to quit can be given by an assignee of part of the reversion on a lease. (L. P. A. s. 140.)

NOTICES.

Service.—The statutory provisions as to service of notice under C. A. 1881 are extended to notices required to be served by an instrument coming into operation after 1925. (L. P. A. s. 196.)

PERPETUITY RULE.

Double possibility rule is abolished as regards instruments coming into operation after 1925. (L. P. A. s. 161.)

Outside the rule.—To remove doubts, sect. 162 provides that the perpetuity rule does not apply to certain powers of distress, rent-charges, &c.

Rights of entry in regard to a fee simple estate, not being a rent-charge held for a legal estate, though they may be made exercisable by successive owners, must be confined to the perpetuity limit. (L. P. A. s. 4 (3).)

Validation of certain void gifts.—Sometimes to uphold a gift a specified age exceeding 21 years will be construed as 21. (L. P. A. s. 163.)

POWER OF APPOINTMENT.

Fraudulent appointment.—Sometimes a purchaser will obtain a good title if he buys property which has been fraudulently appointed, although the appointment may be void. (L. P. A. s. 157.)

Legal and equitable.—See sect. 1 of L. P. A., *ante*, p. 11.

POWERS OF ATTORNEY.

Corporations.—See L. P. A. ss. 74 and 124 (2).

Derivative owners, execution by.—A power of attorney may be given to a purchaser and persons deriving title under him. (L. P. A. s. 128.)

Filing.—A power of attorney relating to land executed after 1925, unless it relates only to one transaction and is to be handed over to a purchaser on completion, must be filed at Central Office, or, if the land is registered, at the Land Registry. (L. P. A. s. 125.)

Purchaser's right to.—A purchaser of land, not being registered land, is entitled to have the power of attorney or an office copy handed over on completion. (L. P. A. s. 125 (2).)

Revocation.—A statutory declaration by an attorney that he does not know of any revocation is made conclusive evidence of the fact of non-revocation by sect. 124 (2) of L. P. A.

PRE-EMPTION, RIGHTS OF.

These may be released. Unless released they remain in force in equity only. (L. P. A. s. 186.) A tenant for life may release such a right with the written consent of the trustees of the settlement. (S. L. A. s. 58 (2).) The right should be registered as a

land charge if created or conveyed after 1925. It is called "an estate contract." (L. C. A. ss. 10, 13 and 14.)

PRESCRIPTION.

Prescription Act, 1832, is not affected by Part I. of L. P. A. (Sect. 12.)

RENT, RENT-CHARGE.

Apportionment.—Power to apportion a rent with a view to its redemption is conferred on the Minister of Agriculture by sect. 191 of L. P. A.

Conveyance subject to.—Certain covenants will be implied after 1925 on a conveyance of land subject to a rent. (See L. P. A. ss. 76, 77.)

Legal and equitable.—See L. P. A. s. 1, *ante*, p. 10.

Redemption.—The statutory right to redeem rents, formerly given by sect. 45 of C. A. 1881, is extended. (See sect. 191 of L. P. A.)

Remedies for recovery of rent-charge.—These will now be found in sect. 121 of L. P. A., which repeats sect. 44 of C. A. 1881, with the necessary modifications to meet the new law that rent-charges for less than a fee simple or term of years absolute are equitable interests only. (See also L. P. A. s. 8 (2).)

Rent-charge on a rent-charge may be created. (L. P. A. s. 122.)

RESERVATIONS.

Legal interests, *e.g.*, easements and rents, may be created by reservation in favour either of the grantor or a third person without any execution of the conveyance by the grantee. (L. P. A. s. 65.)

RESTRICTIVE COVENANTS.

Discharge or modification.—A new method of obtaining a total or partial discharge or modification of restrictions affecting the user of land or buildings is provided by sect. 84 of L. P. A.

Registration.—Restrictive covenants, not being created as between lessor and lessee, should be registered as land charges if created after 1925. (L. C. A. ss. 10, 13.)

Running with land.—As to the benefit and burden of restrictive covenants passing to successors in title, see sects. 78 and 79 of L. P. A.

RESULTING TRUST.

Resulting trust will not arise on a voluntary conveyance merely because the words "and to the use of" are omitted. (L. P. A. s. 60 (3).)

REVERSIONS.

Sales of Reversions Act, 1867, is reproduced in an amended form by sect. 174 of L. P. A.

SHELLEY'S CASE.

The rule is abolished as regards instruments coming into operation after 1925. (L. P. A. s. 131.)

SOLICITORS.

As to the right of a purchaser to employ his own solicitor, notwithstanding any stipulation to the contrary, see sect. 48 of L. P. A.

TENURES.

At the present time the different forms of tenure are (1) freehold, (2) copyhold, (3) leasehold, and (4) frankalmoign. Included under heads (1) or (2), as the case may be, are grand and petty sergeanty, the customs of gavelkind and borough-English, customary freehold and ancient demesne. The L. P. A. 1922 turns copyhold, customary freehold and copyhold of ancient demesne into freehold, or, in some instances, into leasehold, and abolishes the customs of gavelkind and borough-English. (Part V. and 12th Sched., *post*, p. 66; A. E. A. s. 45.) The picturesque and harmless services of grand and petty sergeanty are expressly retained. (L. P. A. 1922, s. 136.) Frankalmoign is not mentioned, but, as it is to all intents and purposes freehold, the result of the Acts will be to leave only two forms of tenure, viz., (1) freehold, (2) leasehold.

Copyhold, converted by the Act of 1922 into freehold, will be immediately free from the customary suits and services and from liability to do fealty (12th Sched. sect. 1), and provision is made by Part VI. for the extinguishment, at latest at the end of 1935, of other manorial incidents. (See *post*, p. 76.) Freehold existing

at the end of 1925 is not affected, except that, at the end of 1935 at latest, any liability to pay rent, relief or heriot will be extinguished (L. P. A. 1922, s. 138 (1)), and that escheat for want of heirs is abolished (A. E. A. s. 45), and instead thereof a right is given to the Crown or the Duchy of Lancaster or the Duke of Cornwall to take as *bona vacantia* the residuary estate of an intestate in default of any person entitled to take it under Part IV. of A. E. A. (A. E. A. s. 46 (1) (vi).) A similar provision applies to copyhold enfranchised by the Act. (L. P. A. 1922, 12th Sched. sect. 1.) Fealty and suit of Court, which are still theoretically due from a freeholder, the Act apparently omits to extinguish in the case of existing freehold, but the omission is of no practical importance. These two and the services of grand and petty sergeanty will at the end of 1935 be the only remaining incidents of freehold tenure.

TITHE RENT-CHARGE.

This remains a legal interest. (L. P. A. s. 1 (2).)

Facilities are provided by sect. 192 of L. P. A. for the apportionment of annuities created for the redemption of tithe rent-charge.

Capital money can be applied in the purchase or discharge of a redemption annuity. (S. L. A. s. 73.) This is retrospective. (S. L. A. s. 118, 4th Sched.)

TITLE DEEDS.

Costs of production on sale.—Sect. 3 (6) of C. A. 1881 is slightly modified by sect. 45 (4) of L. P. A., *post*. Purchaser has not to pay for production of documents in the possession of the vendor's mortgagee or trustee.

Mortgagor's right to inspect.—Sect. 96 of L. P. A. replaces sect. 16 of C. A. 1881, with a slight addition.

Vendor's right to retain.—A new rule is substituted for the 5th Rule in sect. 2 of V. & P. A. 1874, by sect. 45 (9) of L. P. A., *post*.

TRUSTEES.

The statutory provisions with regard to trustees are consolidated by T. A. The L. P. A. 1922 and 1924 introduced various amendments which are incorporated in the consolidating Act. Numerous other provisions with regard to trustees are to be found in L. P. A. and S. L. A., and, with regard to personal representatives, in

A. E. A. The chief alterations introduced into T. A. are the following:—

Advancement, power of.—A limited power of advancement is implied in the case of trusts constituted or created after 1925, unless the trust instrument (if any) shows a contrary intention. (T. A. s. 32.)

Agents.—Sect. 23 of T. A. confers on trustees and personal representatives a wide power of employing agents, unless the trust instrument, if any, shows a contrary intention. The section applies whenever the trust, executorship, or administratorship was constituted.

Similarly, a trustee intending to remain outside the United Kingdom for more than a month may appoint an attorney to execute the trust. "Trustee" here includes a tenant for life and a statutory owner. (T. A. s. 25.)

Appointment of new trustees.—A new power to appoint additional trustees out of Court is given by sect. 36 (6) of T. A. although no vacancy has occurred in the trusteeship.

Some other alterations are made in the statutory power to appoint new trustees out of Court. (See T. A. s. 36.)

Special provisions are made by sect. 35 as to appointment of new trustees of conveyances on trust for sale and of settlements of land. In the case of a trust for sale, two deeds will have to be executed to effect the appointment, and an indorsement of the appointment will have to be made on the conveyance on trust for sale. In the case of a settlement of land, a memorandum of the appointment must be indorsed on the principal vesting instrument.

Audit.—Trustees may have the trust accounts audited by an independent accountant, unless the trust instrument, if any, shows a contrary intention. This applies to trusts constituted before, as well as after, the Act comes into operation. (T. A. s. 22 (4).)

Calls on shares may be paid out of capital money which is subject to the same trusts as the shares, unless the trust instrument shows a contrary intention. (T. A. s. 11 (2).)

Court's power to authorise dealings.—A very wide power is given to the Court by sect. 57 of T. A. to authorise sales, purchases, and other dealings by trustees. This does not apply to S. L. A. trustees.

Documents relating to the trust may be deposited with a bank or any company whose business includes the undertaking of safe custody of documents. (T. A. s. 21.)

Insurance money.—New provisions as to the application of insurance money are contained in sect. 20 of T. A.

Investments.—A few slight alterations are made in the statutory list of trust investments. (See T. A. s. 1.) Bearer securities may be retained or bought, unless the trust instrument expressly prohibits it; but they must be deposited at a bank unless the trustee is a trust corporation. (T. A. s. 7.)

New powers supplementary to their powers of investment are conferred on trustees by sect. 10 of T. A. unless a contrary intention is shown by the trust instrument. These powers are:—

(1) To agree not to call in mortgage money for a fixed period not exceeding seven years.

(2) To allow two-thirds of the purchase-money on a sale to remain on mortgage.

(3) To agree to a reconstruction or amalgamation of a company in which they hold shares, or to an alteration of their rights, and to take up new securities in lieu of the old.

(4) To accept, reject or sell any preferential right to subscribe for new securities offered to them in respect of their holding in a company.

Maintenance.—Much wider powers of using income for maintenance are given to trustees and personal representatives by sect. 31 of T. A. than were contained in sect. 43 of C. A. 1881, which it replaces.

Notice.—A trustee or personal representative acting for one trust or estate is not, in the absence of fraud, affected by notice obtained through acting for another. (T. A. s. 28.)

Number of trustees.—The number of trustees of settlements of land or dispositions of land on trust for sale is limited to four, with certain exceptions. (T. A. ss. 34, 36 (6).)

Similarly, the number of personal representatives is limited to four in respect of the same property. (A. E. A. s. 12.)

On the other hand, there are provisions in the Acts requiring that in some cases there shall be at least two trustees, unless a trust corporation is acting. See, *e.g.*, sect. 27 (2) of L. P. A. as to

trustees for sale; sect. 94 of S. L. A. as to S. L. A. trustees; and sect. 14 (2) of T. A.

Payment into bank.—Trustees may, pending investment, pay trust money into a bank, subject to any provision in the trust instrument. (T. A. s. 11.)

Protection by advertisement.—The power conferred on personal representatives by sect. 29 of L. P. A. A. 1859 to advertise for creditors or next of kin is extended by sect. 27 of T. A. With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or trust for sale or personal representatives are allowed to advertise for claimants.

Protection in respect of rents, covenants, &c.—Sects. 27 and 28 of L. P. A. A. 1859 are extended to trustees, and the scope of them is enlarged by sect. 26 of T. A.

Protective trusts.—Sect. 33 of T. A. explains the effect of directing income, including an annuity, to be held on "protective trusts." The object is, apparently, to shorten trust instruments and provide a statutory precedent of a protected life interest.

Remuneration of trust corporation.—The Court may, when it appoints a corporation, not being the Public Trustee, to be trustee, authorise it to charge. (T. A. s. 42.)

Reversionary interests.—Where trust property includes any share or interest in property not vested in the trustees, they are given wide powers, on its falling into possession, of agreeing or ascertaining the amount or value, accepting authorised investments in satisfaction, allowing deductions for duties, costs, &c., and granting releases. (T. A. s. 22 (1).) They are also relieved from any obligation to put on a *distringas* or apply for a stop order in such a case, or to take proceedings in respect of the acts or defaults of the persons in whom the property is vested. (T. A. s. 22 (2).) These provisions have effect subject to the trust instrument.

Sale of surface and minerals apart.—No leave will be required after 1925 to enable a trustee to sell surface and minerals apart. (T. A. s. 12.)

Sale or mortgage.—Where trustees are authorised by law or the trust instrument to apply capital money subject to the trust for any purpose, they have, and always have had, power to raise the money

by sale or mortgage. This does not apply to charity trustees or S. L. A. trustees unless they are the statutory owners. (T. A. s. 16.)

A purchaser or mortgagee is not concerned to see that the money is wanted or as to its application. (T. A. s. 17.)

Undivided share in proceeds of sale.—Where an undivided share is subject to a trust, the trustees or personal representatives may, in exercising their powers, concur with the owners of the other undivided shares. (T. A. s. 24.)

Valuations may be made, at the instance of trustees, by duly qualified agents so as to bind all persons interested. (T. A. s. 22 (3).)

Vesting declaration.—Some alterations are made by sect. 40 of T. A., the most noteworthy of which is that a deed of appointment of a new trustee or of discharge of a retiring trustee will, if executed after 1925, imply a vesting declaration.

Vesting order.—A few amendments are made as regards the Court's power to make vesting orders. They are referred to under sect. 44 of T. A., *post*.

WILL.

Bastard can make a will of realty or leaseholds. (L. P. A. s. 178.)

Construction.—See sect. 61 of L. P. A.

Forms to which a testator may refer in his will may be published by the Lord Chancellor, but unless so referred to they will not be deemed incorporated. (L. P. A. s. 179.)

Marriage is not to revoke a will made after 1925 if it is expressed to be made in contemplation of the marriage. (L. P. A. s. 177.)

LAW OF PROPERTY ACT, 1922,

AND

LAW OF PROPERTY (AMENDMENT) ACT, 1924.

The bulk of the provisions of these statutes, hereafter referred to as L. P. A. 1922 and L. P. A. 1924, are, as already explained, now repealed and re-enacted by the appropriate statutes, such as the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, &c. But certain portions of the earlier legislation are left to operate as from January 1st, 1926, which date is to be substituted for that of January 1st, 1925, where that date occurs in the L. P. A. 1922. (Law of Property (Postponement) Act, 1924.)

The Parts of the L. P. A. 1922 (as amended by L. P. A. 1924) still left in operation are:—

Part V.—Abolition of Copyhold and Customary Tenure. (Sects. 128 to 137.)

Part VI.—Extinguishment of Manorial Incidents. (Sects. 138 to 144, except sect. 138 (10), now replaced by L. P. A. 1925, s. 44 (7).)

Part VII.—So far as it relates to the Conversion of Perpetual Leaseholds (*i.e.*, sect. 145, incorporating the 15th Schedule, with the exception of sect. 7 (3) of that Schedule, now replaced by L. P. A. s. 149 (6).)

Sect. 48 (3), relating to glebe land (see *ante*, p. 54), and sects. 189 and 190, which contain special definitions applicable to Parts V. and VI. of L. P. A. 1922, and sect. 191, which gives the short title, &c.

Of the L. P. A. 1924, the following parts are left, in addition to sect. 2 and the 2nd Schedule, which contain the amendments of L. P. A. 1922 as regards the en-

franchisement of copyholds and the conversion of perpetually renewable leaseholds into long terms:—

Sect. 1 and 1st Schedule (collecting the repeals effected by L. P. A. 1922—these we have incorporated in a Table of Repealed Acts, *ante*, p. xiii).

Sect. 9 and 9th Schedule, containing an explanation of the manner in which L. P. A. 1922 affects certain statutes. (See *ante*, p. xxviii.)

Sect. 10 and 10th Schedule (Enactments repealed—we have incorporated these in the Table, *ante*, p. xiii).

Sect. 12. Short title, &c.

Abolition of Copyhold and Customary Tenure.

The general scheme is that copyholds (including customary land or customary freeholds where the freehold is in the lord and not in the customary tenant (L. P. A. 1922, s. 189)) are *ipso facto* enfranchised and converted into freehold (in certain cases leasehold). For the purpose of giving effect to the Law of Property Act, 1925, they are deemed to have been so converted immediately before the commencement of that Act, viz., January 1st, 1926. (L. P. A. 1925, s. 202.) Certain manorial incidents (including fines and steward's fees) will, however, continue to attach pending their extinction in manner provided by Part VI. of the Act of 1922. (Sects. 138—144, *post*, p. 76.) Till such extinction, while the land will be conveyed as freehold, the conveyance will become void as to the legal estate, unless within six months of execution it is produced to the steward and endorsed by him with a certificate that all fines, reliefs, fees, &c. have been paid.

Copyholds affected.—L. P. A. 1922, s. 189, contains definitions particularly applicable to Part V. of the Act. Unless the context otherwise requires, "copyhold land" includes (a) land commonly known as customary land, or customary freehold land where the freehold is in the lord and not in the customary tenant; and (b) land of copyhold tenure held for life or lives or for years, where the tenant has by custom a perpetual right of renewal, subject or not to the fulfilment of any conditions; (c) land held in free tenure for life or lives or for years, whether or not determinable with life (but subject to custom), where the tenant has by right a perpetual right of renewal, subject or not to the fulfilment of any

conditions. The same section defines "copyholder in fee" as the person who is admitted in respect of the inheritance, and "tenant" as the person in whom the Act vests the enfranchised land, including persons deriving title under him.

Effects of enfranchisement ((1) in general).—The general result of the Act is to convert the copyhold into freehold. (L. P. A. 1922, 12th Sched. s. 1.) This will be so even where the copyholder's interest was for a life or lives, or for years perpetually renewable. (See *post*, p. 69.)

Copyholds, however, held under any grant from the lord as a copyhold for life or lives, or for years without any right of perpetual renewal, are not enfranchised by conversion of the copyholder's interest into freehold. But the position after the commencement of the Act will be that the copyholder takes a leasehold interest for a period corresponding with his former interest, while the lord will be freehold reversioner thereon, with a right of re-entry exercisable after thirty days on non-payment of rent or breach of covenant, subject to any relief against forfeiture obtainable under the Conveyancing Acts, now sect. 146 of L. P. A. 1925, *post*. Where the interest would formerly have taken effect as an interest for life or lives determinable on the cesser of a life, the interest will take effect as a ninety years' term determinable by notice. (L. P. A. 1922, s. 133; L. P. A. 1925, s. 149 (6), *post*.

The title to the copyhold is transferred to the enfranchised interest which replaces it, and rights and interests in the copyhold (*e.g.*, trusts and powers) continue to affect the land after enfranchisement as before. (L. P. A. 1922, 12th Sched. s. 1 (e) and s. 2.)

The provisions as to enfranchisement of copyholds are extended to Crown manors and lands of the Duchies of Lancaster and Cornwall. (L. P. A. 1922, s. 134.) Special provision is made for the protection of the amenities of Royal parks and gardens in reference to the user of adjacent enfranchised lands. (L. P. A. 1922, s. 137.)

Lengthy provisions are contained in the L. P. A. 1922, 12th Schedule, s. 8, as to the person in whom the legal estate is to vest on enfranchisement. Noteworthy features of these provisions are:—

(1) In general the freehold in fee simple vests in the copyholder in fee simple (not being a mortgagee), or in the person (other than

a mortgagee) having the best right to be admitted as such. (L. P. A. 1922, 12th Sched. s. 8 (a) and (b).) Copyholder in fee simple means the person admitted in respect of the inheritance. (L. P. A. 1922, s. 189.) Where the last person admitted as copyholder in fee was a trustee and died before the commencement of the Act, the personal representative will be deemed to have a better right to be admitted than the devisee or customary heir. (L. P. A. 1924, 2nd Sched. s. 4 (1).)

(2) Where the estate of the copyholder was subject to other interests which are capable of subsisting as legal estates under the Act (see *ante*, p. 8), the vesting of the freehold in the copyholder will enure for the benefit of the persons owning such interests, who will acquire a corresponding legal estate. Thus where there is a lease the tenant will acquire the legal term, the freehold reversion being vested in the landlord. Where the manor practice was for copyholders in fee to grant derivative interests to persons admitted as copyholders, the owner of such derivative interest will take a corresponding interest in the freehold—for a legal estate if the interest is one which is capable under the Act of subsisting as a legal estate, and otherwise for an equitable estate. (L. P. A. 1922, 12th Sched. s. 8 (c) and (d).)

(3) Where the copyholder in fee is a mortgagee, the freehold in fee simple vests in the owner of the equity, subject to the term of years by way of security which the mortgagee will take. (L. P. A. 1924, 2nd Sched. s. 4 (2), and s. 1 (f).)

(4) Where the copyholder in fee is a trustee for a corporation or other person absolutely and beneficially entitled, the freehold in fee simple will vest in the beneficiary. Where the copyholder, who is trustee, is entitled not in fee but for some other interest corresponding to a legal estate, the result is similar. Thus, if A. was copyholder in fee subject to a lease in favour of B., the result of enfranchisement (as already noted in para. (2), above) will be that A. obtains the freehold in fee simple subject to the term of years vested in B. But if in such a case B. held the lease in trust for C., the term of years would vest not in B. but in C. (L. P. A. 1924, 2nd Sched. s. 4 (2).)

(5) Where a person has acquired a title to the copyholds under the Limitation Acts, the freehold will vest in that person. (L. P. A. 1924, 2nd Sched. s. 4 (2).)

(6) Where there exists a lease of copyholds perpetually renewable, the freehold vests in the lessee. (L. P. A. 1922, 12th Sched. s. 8 (e). See *infra*, p. 70.)

(7) In the case of settled copyholds the freehold will vest in the tenant for life of full age or statutory owner (including a personal representative entitled to the settled land) upon the trusts of the settlement. Thus, where in virtue of a special custom to entail there is a tenant in tail on the Court rolls, the legal estate in fee simple will vest in him, but he will hold in trust for the various persons interested, his own beneficial interest being merely an estate tail. Where no manor custom to entail exists a tenant to the use of himself and the heirs of his body has at present a copyhold estate in fee simple conditional only becoming absolute on the birth of issue. In such a case the copyholder will acquire a freehold estate in fee simple with a similar beneficial interest if his estate has become absolute by birth of issue, and if it has not become absolute then his beneficial estate will not be as before a fee simple conditional but will be an estate tail. (L. P. A. 1922, 12th Sched. proviso to s. 8, para. ii.) Other provisions as to copyholds held in undivided shares, or vested in an infant, &c., assimilate the vesting of the legal estate resulting from enfranchisement to the general law as it will exist after 1925.

Where the fee simple vests in any person other than the copyholder in fee, such person is to be deemed to have been admitted as such immediately before the commencement of the Act, and will in general be personally liable to fines, &c. accordingly. But no fine or fee will be payable if there is a copyholder as tenant in fee on the Court rolls (even if only as mortgagee) at the commencement of the Act. (L. P. A. 1922, 12th Sched. proviso to sect. 8, paras. vi. and viii.)

Effects of enfranchisement ((2) perpetually renewable interests).—The effect of the Act on perpetually renewable interests in copyhold land requires somewhat careful analysis. There are really two distinct cases to be dealt with.

The first of these cases occurs where copyholds are held for life or lives, or for years with a perpetual right of renewal. Here the person who was the admitted tenant, or who had the best right so to be, will acquire the freehold. If the last admitted tenant died before the commencement of the Act, then the freehold will vest in

his personal representative. This is by virtue of L. P. A. 1922, s. 135, which treats a tenant on the Court rolls with a limited but perpetually renewable interest as if he were copyholder in fee, and vests the freehold in him. But there is another possibility. The copyholder in fee, or the copyholder with a limited but perpetually renewable interest, may have granted a perpetually renewable lease to his tenant. Here the owner of the renewable lease will not be tenant on the Court rolls, and his case will fall not within sect. 135, but within sect. 145 of L. P. A. 1922. The Act treats him as if the perpetually renewable lease were derived out of the freehold, and his interest is converted into a term of two thousand years. The result of the L. P. A. 1922 in cases such as this last will be that the lessee obtains under sect. 145 a two thousand years' term in accordance with Part VII. of the Act, the freehold reversion in fee being vested in the landlord, either under the general provisions of sect. 128, or if the lessor's own copyhold interest was perpetually renewable, under sect. 135.

This position must be borne in mind in construing the 12th Schedule, sect. 8 (e) of the L. P. A. 1922, which provides that where there is a person entitled to a perpetually renewable lease in the copyhold land (not being a mortgagee), the freehold will vest in him. The large language of this provision must, however, it would seem, be read in light of the opening words of the section, which restrict the section to cases of enfranchisement by virtue of this Act. Since it is only in the first of the two cases above referred to (viz., that under L. P. A. 1922, s. 135) that there is any enfranchisement, it would seem that the provision is inapplicable to cases apt to be caught by L. P. A. 1922, s. 145.

Effects of enfranchisement ((3) mortgages).—The mortgage of copyholds becomes a mortgage for a term of years in accordance with the general provisions of the Act as to mortgages, subject to a proviso for cesser corresponding with the right of redemption. This is so whether the mortgage was by surrender and admittance or surrender alone or even by covenant to surrender. But where the mortgage was by covenant to surrender only the mortgagee will not have priority over a subsequent mortgagee by surrender who had no notice of the covenant to surrender. (L. P. A. 1922, 12th Sched. s. 1 (f).)

Effects of enfranchisement ((4) customs, &c.).—The land ceases to be subject to the customary suits, services and fealty, or to the

custom of borough English, gavelkind, or other customary mode of descent, or special customs as to dower or freebench, curtesy or other custom whatsoever. (L. P. A. 1922, 12th Sched. s. 1.)

But as to persons married before the commencement of the Act and dying before its commencement, their rights as to dower, freebench and curtesy are unaffected. Where a right to freebench has attached before the commencement of the Act and is not capable of being barred by will or other disposition the right will be enforceable in equity. (L. P. A. 1922, 12th Sched. s. 1 (d). Cp. A. E. A. s. 45 (c).)

The land, however, continues liable to the following manorial incidents till these are extinguished as provided by Part VI. of the L. P. A. 1922, ss. 138—144:—(1) Quit and chief rents and the like. (2) Fines, relief, heriots and dues (including fees payable to stewards). (3) Forfeitures (except as stated below, p. 72). (4) Rights to timber. (Sect. 128 (2).)

As to heriots, however, it is provided that no chattel shall be seizable as a heriot, but that a sum equal to its value shall be payable. (L. P. A. 1922, s. 128 (2).)

Enfranchisement will not deprive a tenant of any commonable right to which he is entitled. (L. P. A. 1922, 12th Sched. s. 4.)

For the lord's escheat is substituted a right in the Crown or Duchy of Lancaster or of Cornwall to take as *bona vacantia*. (L. P. A. 1922, 12th Sched. s. 1. Cp. A. E. A. ss. 45 and 46, *post*.)

The services of grand and petty serjeanty are not to be deemed manorial incidents and are not affected by the Act, but the Act is to apply to land held by these tenures as if it had been freehold or copyhold, as the case may require. (L. P. A. 1922, s. 136.)

Enfranchisement is not to affect any existing liability for the construction, maintenance, &c. of any dykes, ditches, canals, sea walls, piles, bridges, levels, ways, and other works required for the protection or general benefit of the manor lands. Any person interested in enforcing such a liability may apply to the High Court to ascertain or apportion it. The charge under an order in respect of these matters is registrable as a land charge under L. C. A., the jurisdiction of any Court leet, customary or other Court in reference to the matter being transferred to the High Court. (L. P. A. 1922, 12th Sched. s. 6.)

Effects of enfranchisement ((5) mines and minerals).—The enfranchisement will not affect any right of the lord to mines, minerals, limestone, lime, clay, stone, gravel pits or quarries, whether under the enfranchised land or not. Nor will it affect rights of entry, way and search or other easement or privilege of the lord, or any powers which the lord might formerly as freeholder have exercised for the purpose of obtaining the mines, minerals, &c. The rights, franchises, royalties or privileges of the lord in respect of fairs, markets, rights of chase or warren, piscaries or other rights of hunting, shooting, fishing, fowling are also unaffected. The former copyholder will, however, be able (without prejudice to the lord's right to any mines and minerals, and the lord's right to work the same) to disturb or remove the soil so far as necessary for the purpose of making roads or drains or erecting buildings or obtaining water. (L. P. A. 1922, 12th Sched. s. 5.)

Effects of enfranchisement ((6) conveyance).—The former copyhold will not any longer be capable of conveyance by customary method, but all land will only be capable of being conveyed in the same manner as freeholds. No forfeiture will in future accrue for conveyance of the land as if it were freehold, nor will any consent to alienation be needed—thus the land can be leased without licence from the lord, even though the manor custom formerly required consent on pain of forfeiture. (L. P. A. 1922, s. 128, and 12th Sched. s. 1 (a).) But where licence would formerly have been needed under pain of forfeiture, till the extinction of the manorial incidents specified in Part V., the same fine must be paid on alienation as would have formerly been payable for the licence (L. P. A. 1922, s. 130 (1)), and where the land is alienated by way of sale, lease, mortgage, or otherwise, and licence would formerly have been required on pain of forfeiture, the same fine will be payable on alienation as would have been payable for a licence. Where such fine is not fixed by custom it may, in default of agreement, be fixed by the Minister of Agriculture. (L. P. A. 1922, s. 130 (2).)

Where the property is mortgaged (unless the case is one where licence would formerly have been needed), no fine is payable till (1) the mortgagee in exercise of any power of sale conveys to a purchaser, (2) the mortgagee transfers without the mortgagor's concurrence, or (3) the right of redemption is extinguished by foreclosure or otherwise. (L. P. A. 1922, s. 130 (3).) But this is

without prejudice to the lord's right to a double fine in the events above mentioned where the mortgagee has not been admitted before the commencement of the Act. (L. P. A. 1922, s. 130 (4).)

Effects of enfranchisement ((7) payment of fines, forfeitures, &c.).—Till the manorial incidents mentioned in sect. 128 are extinguished, the following provisions secure payment of fines, &c. on alienation by any assurance. Till the extinguishment of such manorial incidents, any assurance of the former copyholds or any interest therein will become void as a conveyance of any legal estate unless within six months (extendible by the Court) it is produced to the steward of the manor. (L. P. A. 1922, s. 129 (1).) Where the conveyance is by personal representatives, probate or letters of administration must also be produced. (L. P. A. 1922, s. 129 (9).) On such production, and on payment to him of any fines, reliefs, or heriots payable in respect of the transaction, and the arrears, if any, due in respect of former transactions, and all quit and other rents, and of the prescribed fee, the steward will endorse the conveyance with a certificate of production. If he fail to do this, or refuses a proper tender of the amount due, he will be liable to indemnify any person suffering in consequence. If a dispute arises as to the amount payable, the amount demanded must be paid or tendered without prejudice to the right to recover any excess improperly demanded. (L. P. A. 1922, s. 129 (2).) The certificate is conclusive evidence of production within due time, and any certificate appearing on a conveyance is to be taken to be duly endorsed by the steward unless the contrary is proved. (L. P. A. 1922, s. 129 (3).)

These requirements as to production to the steward, as already mentioned, only apply till the extinction of the manorial incidents in manner provided for by L. P. A. 1922, Part VI. Nor even meantime do they apply where the interest dealt with, *e.g.*, an equitable interest, is unaffected by manorial incidents. (L. P. A. 1922, s. 129 (11).) Finally, they have no application to wills, or to leases, or tenancies for a year or less, or from year to year. But they do apply to assents by a personal representative and vesting orders. (L. P. A. 1922, s. 129 (9).)

Where there is a vacancy for three months in the stewardship, or the steward is unwilling or unable to perform his duties under this Act, power is given the Lord Chancellor (if the lord, after notice, does not appoint a fresh steward) to transfer the duties of the steward

to the Land Registrar. If the old steward acts or attempts to act after this has been done, he is liable on summary conviction to a 50*l.* fine. (L. P. A. 1922, s. 129 (4).) The Land Registrar is to have any prescribed stamp used for endorsing certificates transferred to him, together with the Court rolls, which he will hold as agent for the lord for safe custody. (L. P. A. 1922, s. 129 (8).)

After the commencement of the Act the steward will only be entitled to fees as prescribed by the Minister of Agriculture. As to stewards appointed before the passing of the Act (29th June, 1922), the following provisions apply:—(1) Where the transaction is one where there would have been a customary fee, that fee is to be the prescribed one. (2) On mortgage transactions the prescribed fee is to be that which would have been payable on a conditional surrender. (3) Where the customary fee would have been regulated by the length of the customary assurance, the prescribed fee is also to depend on the length of the conveyance. (Sect. 131 (1).) This provision as to fees applies to fees in respect of any land liable to heriot, quit rent, free rent, &c., as well as to enfranchised land. (L. P. A. 1922, s. 131 (3).)

Any right of forfeiture saved by this part of the Act shall, until it is extinguished, be enforceable by action to recover possession as if the freehold had remained in the lord, and not otherwise. But any such forfeiture is put on the same footing as forfeiture of a lease, and provisions modelled on sect. 14 of the Conveyancing Act, 1881 (now replaced by L. P. A. s. 146), are made applicable. The lord therefore will only be able to enforce the forfeiture if he has given notice requiring rectification of the act or neglect complained of, and there has been failure to comply. Even then it will be open to the Court to grant relief. (L. P. A. 1922, s. 132.)

Special provisions as to payment of fines, &c. are made to meet the case where the manor practice has been to leave the customary estate in fee simple outstanding in a trustee or terre-tenant on trust for the creation of perpetual rent-charges or other derivative interests capable of subsisting as legal estates under the Act. (L. P. A. 1922, s. 129 (10).)

After the commencement of the Act fines and heriots will be recoverable only as simple contract debts (and this even though they became payable before the commencement of the Act). And they will be statute-barred after six years from the time they became

payable, or if already payable at the commencement of the Act, after six years from that date. (L. P. A. 1922, s. 130 (5).)

Court Rolls.—In *Beaumont* v. *Jeffery*, (1925) 1 Ch. 1, P. O. Lawrence, J., held that it is not illegal for the lord to dispose of the Court rolls, and that the purchaser of a manor with notice that the rolls were no longer in the possession of the lord was not entitled to recover them from a purchaser. Probably as a result the L. P. A. 1924 contains provisions designed to secure the preservation of manorial documents.

Save as provided by the Act, manorial documents are placed under the charge and superintendence of the Master of the Rolls and are to remain in the possession or under the control of the lord for the time being of the manor to which they relate, and he shall not be entitled to destroy or damage wilfully such documents. (L. P. A. 1924, 2nd Sched. 2 (2).) "Lord of the manor" here includes any person entitled to manorial documents. (L. P. A. 1924, 2nd Sched. 2 (6).) It would thus include the purchaser in *Beaumont* v. *Jeffery, ubi sup.*

The Master of the Rolls may enquire whether manorial documents are in proper custody and preservation, and is entitled to all such information as he may require from the responsible parties. (L. P. A. 1924, 2nd Sched. 2 (3).) Where the manorial documents are not being properly preserved, or where the lord of the manor so requests, the Master of the Rolls may direct the documents to be transferred to the Public Record Office or to any public library, museum, or historical or antiquarian society willing to receive them, whereupon the governing body of the library, museum or society become responsible for the preservation and indexing of the documents. (L. P. A. 1924, 2nd Sched. 2 (4).)

The above provisions are without prejudice to the right of any person to the production and delivery of copies, and in particular the lord of the manor will remain entitled to production free of costs. "Manorial documents" means here the Court rolls, surveys, maps, terriers, documents, and books of every description relating to the boundaries, franchises, wastes, customs or courts of a manor, but does not include the deeds and other instruments required for evidencing the title to a manor.

The Master of the Rolls is empowered to make rules giving effect to these provisions.

Any person interested in enfranchised land is given a right of inspection of the Court rolls on payment of the fee to be prescribed by the Lord Chancellor (L. P. A. 1922, s. 144), and even after extinction of manorial incidents under Part VI. of the Act the Court rolls continue admissible in evidence on production from the proper custody as documents of a public nature. (*Ibid.*)

Extinguishment of Manorial Incidents.

Extinguishment of manorial incidents.—In due course, and subject to provisions for compensation, are to be extinguished the manorial incidents affecting enfranchised land saved by Part V. of the Act, and incidents of a like nature affecting other land. (L. P. A. 1922, s. 138 (1).) These incidents are (1) quit, chief, and other similar rents; (2) fines, reliefs, heriots and dues, including stewards' fees; (3) forfeitures, other than for conveyance by other than customary methods or for alienation without licence (forfeitures of the last class, of course, stand already abolished under Part. V.—see *ante*, p. 72); (4) rights to timber. (Sect. 128 (2).) This extinguishment is provided for by Part VI., which applies to Crown and Duchy lands as well as land held of a subject. (L. P. A. 1922, s. 141.) But acceptance of the office of steward or other principal officer from the Crown, even after the manorial incidents have been extinguished, will continue to be an acceptance of an office of profit from the Crown for the purposes of the Succession to the Crown Act, 1707. Thus the time-honoured method of resignation from the House of Commons by obtaining appointment as steward of the Chiltern Hundreds will still be available. (L. P. A. 1924, 2nd Sched. s. 1.)

Compensation will be payable in respect of manorial incidents mentioned in L. P. A. 1922, Part II. of the 13th Schedule. The result is that compensation can be claimed not only in respect of the incidents above mentioned, but also of practically all other incidents of copyhold tenure extinguished by the Act. (L. P. A. 1922, s. 138.) Compensation will be payable to the steward for loss of office (see *post*, p. 90), except that a steward appointed after the passing of the Act (29th June, 1922) is not entitled to compensation for loss of office. (L. P. A. 1922, 14th Sched. s. 1.)

As to other rights of the lord, some, *e.g.*, forfeiture on conveyance by other than customary methods, are abolished by Part V. of the

Act. Other rights preserved to the lord by the L. P. A. 1922, 12th Sched. (*e.g.*, rights in relation to mines and minerals) may be treated as if included in the incidents above mentioned and extinguished accordingly if, but only if (L. P. A. 1922, 12th Sched. s. 7), the parties so agree. (L. P. A. 1922, s. 138 (12).) And it may be similarly agreed that the lord shall acquire fresh rights (*e.g.*, easements) over the land concerned as part of his compensation. (L. P. A. 1922, s. 138 (12).) This is subject to special provisions if the agreement relates to mines and minerals, as to which compensation can only be ascertained by agreement, and as to which the agreement itself effects a conveyance of the mines and minerals to the tenant. (*Ibid.*)

Mode of extinguishment.—Extinguishment will take place either (1) on the execution of an agreement in writing between the tenant and the lord as to compensation payable on extinguishment, or (2) upon service by the lord (but only after 1930) or the tenant (even before 1930) upon the other of a notice requiring the assessment of such compensation, or (3) if no such agreement has been arrived at or notice served, then at the expiration of ten years from the commencement of the Act. The time limit may, however, be extended by the Minister of Agriculture in a manor where there are not less than a thousand tenants holding land affected, on the application of the lord or not less than two-thirds of the tenants. The extinguishment will not prejudice rights accrued at its date. (L. P. A. 1922, s. 138 (1).)

Even where method (2) above has been adopted, and notice requiring assessment of compensation given, at any time within ten years of the Act, *i.e.*, before January 1st, 1936, and before compensation has been ascertained, the parties may still adopt method (1) and make use of a compensation agreement instead. (L. P. A. 1922, s. 139 (1) (ix).)

In general it is probably the first or second of the above methods that will be adopted. Automatic extinguishment by effluxion of time under the third method is not encouraged by the Act. Thus extinguishment occurs in default of an earlier date on January 1st, 1936, but five years more remain within which to obtain compensation—there is no compensation after 1940—while in any case no compensation will be obtainable in respect of loss of profit from manorial incidents as from the end of 1935 to the date when appli-

cation to ascertain compensation is made. (L. P. A. 1922, s. 140.) Further, a provision exempting compensation agreements, &c. from stamp duty only operates till the end of 1935 (L. P. A. 1922, s. 139 (1) (vii)), after which date also the possibilities of computing compensation are less elastic.

Compensation agreements may be effected either (1) independently of the Copyhold Act, 1894, by the persons able to dispose of the manorial incidents on sale and the land affected respectively, or (2) under Part II. of the Copyhold Act, 1894, by the persons who could have enfranchised under that Act with the consent of the Minister of Agriculture. But resort is not to be had to Part II. of that Act unless the Minister thinks that course most convenient. (L. P. A. 1922, s. 138 (3).)

Unless agreement is effected independently of the Copyhold Act, 1894, that Act (as modified for this purpose by the present Act) is to apply, reading "extinguishment" for "enfranchisement," and "land affected by extinguishment" for "enfranchised land." (L. P. A. 1922, s. 138 (4).) Unless otherwise agreed, compensation for the extinction of manorial incidents is to be assessed on the basis of the land having continued unenfranchised by the present Act. (*Ibid.*)

And it must be borne in mind in dealing with all the provisions as to manorial incidents that the Act (L. P. A. 1922, s. 143) gives in this context an enlarged meaning to the expression landlord and tenant. (See *post*, p. 81.)

Extinguishment by agreement or notice to ascertain compensation.—Provisions are made for facilitating extinguishment of manorial incidents whether under the Copyhold Act or independently thereof. If extinguishment takes place under the Copyhold Act these provisions are to be read into that Act as amended. These provisions are:—

(1) The lord and tenant are required to afford to each other and to the Minister of Agriculture any information necessary for assessing compensation. (L. P. A. 1922, s. 139 (1) (i).)

(2) No compensation is to be allowed to the lord for any right of forfeiture except under the scale in Part II. of the 13th Schedule (see *post*, p. 89), or for any other advantage to the tenant unless there is a corresponding loss to the landlord, and then only to the extent of that loss. (*Ibid.* (ii).)

(3) Compensation to the steward (only payable if he was appointed before the passing of the Act, viz., 29th June, 1922) is in default of agreement to be regulated by the 14th Schedule. (*Ibid.* (iii).)

(4) Provision is made that compensation to the steward is to be paid by the lord or other person effecting the compensation agreement in right of manorial incidents, compensation to the steward being included with the other compensation payable by the tenant. If the manor is settled or held on trust for sale, the lord is given a right to demand that compensation so paid by him, together with his expenses incurred in connection therewith, be discharged out of capital monies, &c., or he may charge the manor or other lands settled on the same trusts, the charge being either by way of legal mortgage or by certificate of charge under the Copyhold Act, 1894, which will have the effect of a charge by way of legal mortgage. (*Ibid.* (iv).)

(5) The Act provides at length as to payment of compensation. Unless the gross amount is paid within thirty days of ascertainment, compensation will (apart from agreement) be payable by twenty annual instalments commencing on January 1st after ascertainment of the amount, each instalment including interest at $5\frac{1}{2}$ per cent. on the amount of the compensation not yet paid, and secured by way of terminable rent varying in amount as instalments are paid, charged on the land to which the manorial incidents attached. In some special cases (*e.g.*, if the compensation does not exceed 20*l.* (see also *post*, p. 81)) the compensation is payable in a gross sum recoverable as a debt. (*Ibid.* (v).) Special provision is made in case the land is settled or held on trust for sale. (*Ibid.*)

(6) Where land subject to manorial incidents is intermixed with other lands power is given to the Minister of Agriculture to delimit the respective boundaries where that is a matter of difficulty. (*Ibid.* (vi).)

(7) On extinguishment within ten years of the Act agreements, &c. are not subject to stamping and no fees are chargeable by the Ministry of Agriculture except for unreasonable or unnecessary applications. (*Ibid.* (vii).)

(8) Compensation is to be regulated by the 13th Schedule, Part II. (*post*, p. 82), subject to variation by the Minister of Agriculture in special cases. (*Ibid.* (viii).) A general order may be made authorising variation as regards the entire manor on the application of either the lord or of at least twenty tenants. (Amendment Act, 2nd Sched. s. 3 (1).)

(9) Where compensation is under a notice requiring ascertainment thereof the costs of assessment will normally and subject to exceptions fall on the party giving the notice. (*Ibid.* L. P. A. 1922, s. 139 (1) (ix).)

(10) Where the Copyhold Act, 1894, fixed interest at 4 per cent. this is to be read as $5\frac{1}{2}$ per cent. References to perpetual compensation rent-charges in that Act are to be read as reference to payment by instalments secured by terminable rent-charge. (*Ibid.* (x).)

Certain further provisions for facilitating enfranchisement where extinguishment takes place under the Copyhold Act are contained in L. P. A. 1922, s. 139 (2). Notably amongst other things it is provided that in default of agreement valuations for assessing compensation are to be made by a single valuer appointed by the Minister.

Further provisions for facilitating compensation agreements are contained in L. P. A. 1922, s. 138 (5), which, *inter alia*, authorises any person who has power to sell the land or the manor to agree to the creation of a compensation rent-charge. For form of agreement, see the L. P. A. 1922, 13th Schedule, Part I., *post*, p. 82.

Automatic extinguishment at the end of ten years.—Where at the expiration of ten years from the commencement of the Act, *i.e.*, January 1st, 1936, the manorial incidents have not been extinguished by agreement or by notice to ascertain compensation, and they become automatically extinguished in virtue of this Act, then—

(1) At any time within the next five years either lord or tenant may apply to the Minister of Agriculture to determine the amount of compensation, which will be ascertained in accordance with the Copyhold Act, 1894, as modified by this Act, as if landlord and tenant had agreed under Part I. of the Copyhold Act, 1894, for determination by a single valuer appointed by the Minister, rents, fines, &c. payable

between the expiration of the ten years and the application to the Minister to assess compensation not being taken into account for purposes of calculation. (L. P. A. 1922, s. 140 (a).)

(2) Any annual terminable rent-charge payable as compensation will commence from the date of application to the Minister, no interest being allowable to the lord for the period between January 1st, 1936, and the date of the application. (Sect. 140 (b).) If no application is made before January 1st, 1941, no compensation will be recoverable. (L. P. A. 1922, s. 140 (c).)

Where manorial incidents are not extinguished till January 1st, 1936, the costs of determining compensation will still fall on the tenant unless the Minister of Agriculture considers that the conduct of the lord has been unreasonable or that special considerations apply, when he may make a special order as to costs. (L. P. A. 1922, s. 140 (d).)

Compensation where derivative interests are enfranchised.—L. P. A. 1922, s. 142, as amended by L. P. A. 1924, 2nd Sched. s. 3 (2), deals with cases where derivative interests are entered on the Court rolls of a manor in respect of which the fines are certain, and provides that for purposes of compensation the derivative interest and the reversion subject thereto are to be treated separately. Thus, where the manor custom has permitted a tenant for life to be admitted on the Court rolls, the result of the enfranchisement provisions will be that the former tenant for life will acquire a ninety years' term determinable, the freehold estate in fee simple vesting in his former copyhold landlord. In such cases the tenant with the ninety years' term and the owner in fee will each make their own compensation arrangements with the lord of the manor and will only be liable for compensation to the extent to which their own interest is affected by the extinguishment of manorial incidents. In all such cases the compensation payable will be a gross sum.

Meaning of "lord" and "tenant."—The Part (VI.) of the L. P. A. 1922 dealing with the extinction of manorial incidents is to be construed as one with the Copyhold Act, 1894. But the expression "lord" where the context so requires means any person having power to effect a compensation agreement in right of the

manorial incidents, and for the definition of "tenant" the following is substituted: "The expression 'tenant' means the person in whom the land enfranchised under Part V. of the Law of Property Act, 1922, is made to vest and the persons deriving title under him, and includes the person entitled to the legal estate in or the possession of any other land subject to manorial incidents, whether or not those incidents have been severed from the manor." Where manorial incidents have been severed from the manor the person able to dispose of these incidents by sale is to be treated as lord of the manor in respect of such incidents. (L. P. A. 1922, s. 143.)

Compensation.—As to payment of compensation out of capital moneys, see S. L. A. ss. 71 and 73. Compensation is regulated by L. P. A. 1922, 13th and 14th Schedules, which, as slightly amended in respect of sect. 13 of the Second Part of the 13th Schedule (L. P. A. 1924, 2nd Schedule, s. 4 (3)), run as follows:—

THIRTEENTH SCHEDULE.

Compensation for Extinguishment of Manorial Incidents.

Part I.

Form No. 1.

Compensation Agreement.

Manor of , in the County of .

An Agreement made the day of 19 , Between *A.B.*, of &c. (Lord of the above-mentioned Manor) of the first part, *C.D.*, of &c. (Mortgagee of the said Manor) of the second part, *E.F.*, of &c., and *G.H.*, of &c. (Settled Land Act Trustees of the Vesting Deed affecting the said Manor) of the third part, *X.Y.*, of &c. (the Owner of the land described in the First Schedule hereto, formerly copyhold of the said Manor but now enfranchised by virtue of the Law of Property Act, 1922) of the fourth part, and *H.J.*, of &c. and *K.L.*, of &c. (Settled Land Act Trustees of the Vesting Deed affecting the said land), of the fifth part.

[Note.—In framing compensation agreements only the persons who on a sale of the manorial incidents and of the land affected would have been able to make a title thereto respectively and give a receipt for the purchase money will be made parties.]

WITNESSETH AS FOLLOWS:—

1. Pursuant to the Law of Property Act, 1922, it is agreed that the compensation for the extinguishment of the manorial incidents saved by Part V. of that Act affecting the said land [and of the rights of the lord in or to any mines and minerals in or under the said land and the sporting and other rights affecting the same preserved by the Twelfth Schedule to that Act] shall be the sum of pounds with interest thereon payable half yearly at the rate of five and a half pounds per cent. per annum from the date hereof until paid [*or* the principal sum of pounds to be paid by twenty equal instalments, the first instalment to be paid on the first day of January next with interest at five and a half per cent. per annum on the said principal sum from the date hereof and a further instalment with interest at the like rate on so much of the said principal sum as for the time being remains unpaid to be paid on every subsequent first day of January until the said principal sum shall be fully paid (all interest up to date being paid with the instalments) and so long as any of the said instalments and interest remain payable a terminable and variable rent-charge commencing from the date hereof and accruing from day to day but payable at the same time as the instalments and interest shall issue out of the said land [*or* the part of the said land described in the first part of the First Schedule hereto] of an amount equal to the said instalments and interest from time to time payable and so as to secure the same].

2. The said (*the person who retains the custody of the documents mentioned in the first part of the Second Schedule which relate to the manor*) hereby acknowledges the right of the said to production of the documents mentioned in the first part of the Second Schedule hereto and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

3. The said (*the person who retains the documents mentioned in the second part of the Second Schedule which relate to the land*) hereby acknowledges the right of the said to production of the documents mentioned in the second part of the Second Schedule hereto and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

4. The steward's compensation and all costs and expenses paid or incurred by the lord and recoverable from the tenant in respect

of this extinguishment have been included in the compensation money aforesaid.

As WITNESS the hands of the parties hereto the day and year first above written.

[NOTE.—If the compensation is not paid in one gross sum, then the agreement should be executed in duplicate. If the tenant releases his rights in the minerals and grants any facilities for working the same the release and grant may be inserted in the agreement which should then be executed under seal. Though the mines and minerals included in the copyhold tenement are enfranchised, the rights in relation thereto are not affected unless expressly included as in paragraph 1.

The undertaking in paragraphs 2 and 3 will be omitted where a mortgagee or trustee retains the documents.]

The FIRST SCHEDULE referred to in the above Agreement.

DESCRIPTION OF THE LAND AFFECTED BY THE MANORIAL INCIDENTS.

[Note this description will be taken from the Court Rolls, unless a new description is agreed to. In default of agreement the party requiring a plan or new description must bear any additional costs incident thereto.]

The SECOND SCHEDULE referred to in the above Agreement.

FIRST PART.

Particulars of documents relating to the said Manor and retained by the said .

SECOND PART.

Particulars of documents relating to the said land and retained by the said .

FORM No. 2.

RECEIPT FOR RENTS, &C. AND GROSS SUM TO BE ENDORSED ON THE COMPENSATION AGREEMENT.

The Manor of , in the County of .

1. The within-named lord of the above-mentioned manor hereby acknowledges that all rents, fines, reliefs, heriots and fees payable in respect of the land referred to in the within Agreement have been duly discharged.

2. The said lord [*or* The within named and (as trustees for the purposes of the Settled Land Acts of the Vesting Deed affecting the said manor *or other the proper description of the persons who would be entitled to give a receipt for the proceeds of the sale if the manorial incidents were sold*)] hereby acknowledge[s] the receipt of the Compensation money by the within written Agreement agreed to be paid and all interest (if any) due thereon.

Dated this day of 19 .

[NOTE.—Paragraph 2 will only be used when the compensation is paid in a single gross sum. If a rent-charge is created separate receipts must be given as and when each instalment is paid.]

Section 139.]

PART II.

SCALE OF COMPENSATION FOR EXTINGUISHMENT OF MANORIAL INCIDENTS.

Fines Arbitrary.

1. In fine arbitrary cases where a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines shall not exceed the number of years' annual value of the land according to the age of the tenant as set forth in the table annexed to this schedule.

2. The table is calculated on the principle that a fine based on two years' annual value is payable on each change of tenancy; therefore, in those manors in which the customary fine on alienation by, or on the death of, a tenant, is based on more or less than two years' annual value, a proportionate increase or reduction shall be made in the amount of the compensation.

3. In estimating the annual value of the land, no deduction shall be made for land tax or landlord's property tax, but the quit rent shall be deducted, and, where there are buildings, allowance shall be made for keeping the buildings in repair. In default of agreement the gross annual value of the land as separately assessed for the purposes of Schedule A. of the Income Tax Act, shall (save as hereinafter provided and unless the Minister for any special reason otherwise directs) be used as the basis for ascertaining the annual value. Provided that either party may in any case require the annual value to be assessed by an agreed valuer or by a valuer appointed by the Minister.

4. Where there are facilities for improvement or the land has a present or prospective building value, one twentieth part of the capital value of the land as freehold to be determined (in default of agreement) by a valuer appointed by the Minister, shall be used as a basis for ascertaining the annual value.

Fines Certain.

5. In fine certain cases where a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines shall be calculated by multiplying the amount of the fine by one half of the number of years' purchase given in the table according to the age of the tenant.

Reliefs.

6. The amount of compensation for a relief shall be calculated in like manner as a fine certain.

Heriots.

7. The compensation for a heriot payable on alienation by, as well as on the death of, a tenant, shall be calculated by multiplying the value of the heriot by one half of the number of years' purchase given in the table according to the age of the tenant.

8. The value of a heriot shall be ascertained from the average value of the last three heriots taken or paid in respect of the land enfranchised. If that information cannot be obtained without undue expense the following circumstances shall be taken into account in fixing the value of the heriot, namely, the nature of the heriot, the character and value of the land, the condition in life of the tenant, and whether the heriot can be seized without as well as within the manor.

When Fine or Heriot payable only on one of the Events of Alienation or Death.

9. The table being calculated on the assumption that fines and heriots are payable both on alienation *inter vivos* by a tenant and on his death, when a fine, whether arbitrary or certain, or a heriot, is payable only on one of those events, then only one half of the compensation calculated as previously directed shall be given.

When Fine or Heriot payable on Death of Lord.

10. In manors in which fines or heriots are payable on the death of the lord, as well as on alienation by, or on the death of, a tenant,

the compensation on the extinguishment of manorial incidents shall be increased according to the nature and amount of the customary fine or heriot payable in the manor on the death of the lord.

Quit Rents and other Annual Payments.

11. The compensation for quit rents, free rents, and other annual rents, services, or payments, shall be calculated at 20 years' purchase.

Timber.

12. Compensation for timber shall be ascertained as follows:—Where by a special custom of the manor the lord can enter upon the land, and cut and carry away the timber without the consent of the tenant, its whole value, after making a sufficient allowance for repairs, shall be given to the lord. But where there is no special custom, so that the ordinary law of copyholds is applicable and therefore the lord cannot enter and cut without the consent of the tenant, one half only of its value, after making a sufficient allowance for repairs, shall be given. If there be any other special custom in the manor relating to timber, such custom shall be regarded.

Other Incidents.

13. The compensation for *forfeitures and all other* incidents of copyhold tenure extinguished or not saved by virtue of this Act and not otherwise provided for shall be 20 per cent. of the annual value of the land ascertained as provided in paragraphs 3 and 4; *or where the copyhold interest liable to forfeiture is less than a customary fee simple, or is subject to a lease binding on the lord 20 per cent. of the annual value of such copyhold interest to be ascertained in such manner as the Minister may determine to be proper.**

This paragraph extends to forfeitures, whether or not for the conveyance or attempted conveyance of an estate of freehold in the land or for alienation without licence by way of sale, lease, mortgage, or otherwise:

Provided that, where by the custom of the manor the tenant has an unrestricted right of demising and otherwise dealing with the land without the licence of the lord, no compensation shall be payable under this paragraph unless the Minister otherwise determines; and where the unrestricted right relates to part only of the land the compensation shall be adjusted accordingly.

* The italicised words are introduced by L. P. A. 1924.

Perpetually Renewable Copyholds.

14. In the case of perpetually renewable copyhold land the compensation for the extinguishment of the manorial incidents payable on renewal shall be 20 years purchase of the yearly rent (including additional rent) which would have been payable under the 15th Schedule to this Act if that Schedule were applicable, and until the incidents are extinguished the said rent (including as aforesaid) shall be payable as a quit or free rent in respect of the land, and except in so far as the same shall have been paid shall be added to the compensation.

Escheat and other Rights reserved.

15. The right of escheat being abolished for the benefit of the Crown, or the Duchy of Lancaster or the Duke of Cornwall, its value is not to be taken into consideration.

If any rights reserved to the lord by the Twelfth Schedule to this Act are acquired by the tenant, the amount of the compensation therefor shall be ascertained by agreement.

When Land held by joint Tenants or on behalf of Tenants in common.

16. In the case of an extinguishment of manorial incidents by joint tenants, the compensation for fines, and heriots, if any, shall be based upon such a single life as may be equivalent to the expectation of survivorship of the joint lives according to the rules and tables appended to the Succession Duty Act, 1853. This provision shall apply to an extinguishment of manorial incidents by trustees for sale (whose expectation of survivorship shall be taken into account) on behalf of persons interested as co-parceners or tenants in common in the net proceeds of sale.

Interest.

17. Interest shall be payable half-yearly on the amount of the compensation at the rate of five and a half pounds per cent. per annum from the date of the agreement or notice requiring the ascertainment of the compensation to the date of payment of the compensation, unless the compensation is paid by way of an annual terminable rentcharge under this Act.

Date of Computation.

18. The value of any matter to be taken into account in ascertaining the compensation payable shall be calculated as at the date of the extinguishment.

TABLE REFERRED TO IN THE FOREGOING SCHEDULE, PROVIDING A SCALE OF COMPENSATION FOR EXTINGUISHMENT OF MANORIAL INCIDENTS.

Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.
5 or under 6	1·06	38	2·00	72	3·31
		39	2·03	73	3·35
		40	2·07	74	3·38
6	1·09	41	2·10	75	3·41
7	1·11	42	2·14	76	3·45
8	1·14	43	2·17	77	3·48
9	1·16	44	2·21	78	3·51
10	1·19	45	2·25	79	3·54
11	1·21	46	2·29	80	3·56
12	1·24	47	2·33	81	3·59
13	1·26	48	2·36	82	3·62
14	1·29	49	2·40	83	3·64
15	1·31	50	2·44	84	3·67
16	1·34	51	2·48	85	3·69
17	1·37	52	2·52	86	3·71
18	1·39	53	2·56	87	3·73
19	1·42	54	2·60	88	3·75
20	1·45	55	2·65	89	3·77
21	1·48	56	2·69	90	3·79
22	1·51	57	2·73	91	3·80
23	1·53	58	2·77	92	3·82
24	1·56	59	2·81	93	3·83
25	1·59	60	2·85	94	3·85
26	1·62	61	2·89	95	3·86
27	1·65	62	2·93	96	3·87
28	1·68	63	2·97	97	3·89
29	1·71	64	3·01	98	3·90
30	1·74	65	3·05	99	3·91
31	1·77	66	3·09	100	3·92
32	1·80	67	3·13	101	3·93
33	1·83	68	3·17	102	3·94
34	1·86	69	3·20	103	
35	1·90	70	3·24	or upwards	3·96
36	1·93	71	3·28		
37	1·96				

In constructing this Table a fine arbitrary on admission has been taken as based on two years' annual value, and whilst the average fine interval has been assumed to be 14 years, regard has been had to the age of the tenant.

Where the enfranchised land is by this Act made to vest in a corporation the same compensation shall be payable as if 40 years were the age of the tenant.

Section 139.]

FOURTEENTH SCHEDULE.

Scale of Steward's Compensation for Loss of Office.

In fine arbitrary cases.	In fine certain cases.	Amount of compensation to the steward. £ s. d.
Where the compensation to the Lord—	Where the compensation to the Lord—	
Does not exceed 1*l.* -	Does not exceed 12*s.* -	0 7 6
Exceeds 1*l.* but does not exceed 5*l.*	Exceeds 12*s.* but does not exceed 3*l.*	0 15 0
Exceeds 5*l.* but does not exceed 10*l.*	Exceeds 3*l.* but does not exceed 6*l.*	1 10 0
Exceeds 10*l.* but does not exceed 15*l.*	Exceeds 6*l.* but does not exceed 9*l.*	2 0 0
Exceeds 15*l.* but does not exceed 20*l.*	Exceeds 9*l.* but does not exceed 12*l.*	4 10 0
Exceeds 20*l.* but does not exceed 25*l.*	Exceeds 12*l.* but does not exceed 15*l.*	6 0 0
Exceeds 25*l.* but does not exceed 50*l.*	Exceeds 15*l.* but does not exceed 30*l.*	9 0 0
Exceeds 50*l.* but does not exceed 100*l.*	Exceeds 30*l.* but does not exceed 60*l.*	10 10 0
For every additional 25*l.* or fractional part of 25*l.* over and above the first 100*l.*	For every additional 15*l.* or fractional part of 15*l.* over and above the first 60*l.*	0 7 6

1. A steward appointed after the passing of this Act shall not be entitled to compensation for loss of office.

2. Where the compensation agreement, or notice to ascertain the compensation, relates to more than one tenement, the steward's compensation shall be calculated on the amount of the compensation payable to the lord under the agreement or notice.

3. The remuneration of solicitors in connexion with the extinguishment of manorial incidents shall from time to time be prescribed and regulated by general orders made by the Committee in England constituted or nominated under section two of the Solicitors Remuneration Act, 1881, and that the Act shall apply accordingly, and, if any dispute arises as to costs or expenses, the same shall be taxed by the registrar of the county court.

4. Where the lord is a solicitor, he shall, if he acts for himself, be entitled to costs and expenses in place of the steward, but (there

being no steward) not to any steward's compensation unless otherwise agreed.

Perpetually Renewable Leaseholds.

Conversion of perpetually renewable leaseholds into long terms.—Provision is made by the L. P. A. 1922, s. 145 (incorporating the 15th Schedule of that Act), for the conversion of existing perpetually renewable leaseholds and for the prevention of the grant of such in future. Where, at the commencement of the Act, there exists a perpetually renewable lease the land will vest in the lessee for a term of two thousand years calculated from the commencement of the existing term. (L. P. A. 1922, 15th Sched. s. 1.) For the purpose of giving effect to the Law of Property Act, 1925, sect. 202 of that Act provides that this conversion is to be deemed to have had effect immediately before the commencement of that Act (January 1st, 1926).

Similar provision is made as to perpetually renewable sub-terms derived out of a perpetually renewable head term. The sub-tenant's interest is converted into a term of two thousand years less a day. A perpetually renewable sub-sub-term is converted into a term one day shorter than the sub-term. (L. P. A. 1922, 15th Sched. s. 2.)

The long term resulting from conversion replaces the original term or sub-term and is subject to the same trusts, powers, executory limitations over, rights and equities as was the original term or sub-term. (L. P. A. 1922, 15th Sched. s. 3.) But any defect in title attaching to the original term or sub-term will attach also to the term resulting from conversion. (L. P. A. 1922, 15th Sched. s. 4.) As to the effect of the Act where the lease is subject to a mortgage, see L. P. A. 1925, 1st Sched. Part VIII. para. 6.

During the long terms and sub-terms created by the Act, the rent, covenants and conditions in the lease or sub-lease will be enforceable in the same way as during the original term. (L. P. A. 1922, 15th Sched. s. 1 (2) and s. 2 (2).) This is, however, subject to two qualifications: (1) the terms of the original lease are modified by the Act in certain respects (*post*, p. 93), and (2) the liability for rent and breach of covenant only attaches to the tenant (stipulation to the contrary notwithstanding) in respect of matters arising while the term is vested in him or his personal representatives. This applies even to the original lessee, who is only to be liable as if the term or sub-term had been assigned to him immediately after

its creation. The result is that the original lessee will cease to be liable even on his express covenants in respect of breaches occurring after he has assigned. (L. P. A. 1922, 15th Sched. s. 11.)

These provisions are, however, without prejudice to claims which have already accrued before the commencement of the Act. (*Ibid.*

Nature of perpetual leases affected.—By L. P. A. 1922, s. 190, in this Part of the Act "a perpetually renewable lease or underlease" means a lease or underlease, the holder of which is entitled to enforce (whether or not subject to the fulfilment of any condition), the perpetual renewal thereof, and includes a lease for a life or lives, or for a term of years, whether determinable with a life or lives or not, which is perpetually renewable as aforesaid, but does not include copyhold land held for a life or lives or for years, whether or not determinable with age where the tenant had before the Act a perpetual right of renewal subject or not to the fulfilment of any condition.

As to perpetually renewable leases of copyholds, see the L. P. A. 1922, 12th Sched. s. 8 (e), and *ante*, p. 69. L. P. A. 1922, s. 190, also defines "lessor," "lessee," and "underlessee," and provides that unless the context otherwise requires, "underlease" includes a sub-term created out of a derivative leasehold interest, *i.e.*, a sub-sub-term.

Future effect of grants of and contracts for, and power to grant perpetually renewable leaseholds.—After the commencement of the Act a grant of a lease or sub-lease with a covenant for perpetual renewal, which would be valid apart from the Act, will take effect as a demise for two thousand years, or in the case of a sub-lease for the term of the head lease less one day. (L. P. A. 1922, 15th Sched. s. 5.) A contract to grant a renewable lease or sub-lease will operate as an agreement to grant a two thousand years' term, or a sub-term less than the term in the head lease by a day. (L. P. A. 1922, 15th Sched. s. 7.)

Such a contract existing at the commencement of the Act will have the same operation, except that the amount of the rent to be paid is, if necessary, to be adjusted, having regard to the loss of fines and other payments on renewal. Disputes as to this adjustment are to be determined by the Minister of Agriculture. (L. P. A. 1922, 15th Sched. s. 6.)

Powers under a custom, or conferred by statute or other instrument, to grant renewable leases or sub-leases will in future take effect

as powers to grant leases or underleases for a term not exceeding two thousand years at the best rent reasonably obtainable, having regard to any fine taken and all the circumstances, or at the peppercorn or other rent authorised by the power. (L. P. A. 1922, 15th Sched. s. 8 (1).)

Nothing in the Act is to prejudice any right of renewal under the Small Holdings and Allotments Act, 1908, s. 44, or the powers under sect. 40 of that Act. (L. P. A. 1922, 15th Sched. s. 9.)

Incidents of the term into which perpetually renewable leaseholds are converted.—In any lease or underlease taking effect under the Act as a term of two thousand years, or two thousand years less one or more days, will be implied:—

(1) A power to the lessee or sub-lessee to give ten days' written notice terminating the lease at any date from time to time occurring when it would formerly, apart from renewal, have expired. (L. P. A. 1922, 15th Sched. s. 10.)

(2) A covenant by the lessee or sub-lessee to register every assignment or devolution of the term within six months thereof with the lessor or his solicitor or agent at an inclusive fee of one guinea. This covenant replaces and overrides any express covenant. (*Ibid.*)

(3) A covenant by the lessee or sub-lessee to produce, within one year after the commencement of the Act, his lease or underlease, with evidence showing a right of perpetual renewal, to the lessor or his solicitor or agent, who, if the right is admitted or proved, is to endorse notice of the fact on the lease, &c., such endorsement to be conclusive evidence of the right in favour of purchasers. (*Ibid.*)

The proviso for re-entry, if any, contained in the lease is to apply to breaches of the above implied covenants as well as those expressly contained in the lease.

Disputes as to the date when a notice to quit at a renewal date should be served, or whether the lease, &c. ought to be endorsed as above, are to be decided by the Minister of Agriculture. (*Ibid.*)

Conversion of Fines, &c. in respect of perpetually renewable leaseholds into additional rent.—Where a fine or other payment, including a heriot, was payable on renewal, the amount will be payable by instalments as additional rent. (L. P. A. 1922, 15th Sched. s. 12 (1).) The general scheme is to convert the fine into an annual additional rent at such a figure as will during

the period or average period between renewal dates amount to the equivalent of the fine. In other words the fine, instead of being payable at the end of successive periods, is spread over those periods by way of rent. In default of agreement and subject to direction to the contrary by the Minister of Agriculture, the amount of the additional rent will be ascertained on the basis of the fines, &c. which would have been payable on the occasion of the first renewal if this Act had not been passed. Where there was a right of renewal at different times, then the date to be treated as the first occasion of renewal is, either (a) the date selected by the tenant under written notice to the landlord given within a year of the commencement of the Act, or (b) if no such notice is given the last possible date for renewal. (L. P. A. 1924, 2nd Sched. s. 5 (3).) Where the renewal date was not definitely fixed for any particular date, then the date to be taken will be such date within one year from the commencement of the Act as the landlord and tenant agree, or in default of agreement it is fixed by the Minister of Agriculture. (L. P. A. 1922, 15th Sched. s. 12 (3).) In calculating the amount due, nothing must be included for the costs of any conveyancing work in respect of the renewal (*e.g.*, the grant of a new lease) rendered unnecessary by the provisions of the Act. (L. P. A. 15th Sched. s. 12 (1).)

The amount arrived at on this basis will be payable by yearly instalments paid by way of additional rent and continuing during the subsistence of the long term or sub-term into which the renewable leaseholds or sub-leaseholds are converted by the Act. The first instalment, it is provided, is to be paid at the end of the first year after the commencement of the Act. Subject to order by the Minister of Agriculture or by the Court, and in default of agreement, the amount of the annual instalment will be ascertained by an actuary, regard being had to the interval or average interval occurring between the dates of renewal and to any other circumstances affecting the amount payable on renewal. (L. P. A. 1922, 15th Sched. s. 6 (5); L. P. A. 1924, 2nd Sched. s. 5 (5).)

Thus, in general, if the amount payable on renewal would be 20*l.*, and the renewal date occurs at intervals of sixty years, the additional rent may normally be expected to be assessed at something under 6*s.* 8*d.*, *i.e.*, the amount of the payment divided by the number of years in question less an allowance by reason of payments being made before the arrival of the renewal date.

Where the right of renewal would have been forfeited on non-payment of a fine or other omission, no forfeiture is to accrue in future. No compensation is given the landlord for loss of a possible right of re-entry unless the non-payment or omission had reference to a period ascertained by the dropping of a life. In that case the lessor is compensated by treating the amount of the fine which would have been payable on renewal as increased by a percentage on the annual value of the land, thus increasing the additional rent payable. (L. P. A. 1922, 15th Sched. s. 12 (6).) This percentage will be such as the Minister of Agriculture prescribes. (L. P. A. 1924, 2nd Sched. s. 5 (6).)

The lessor and lessee may, however, agree for the commutation of this additional rent or any part thereof, as to the dates of payment, and many other matters involved. A statement in writing as to the terms agreed on endorsed on the lease, &c. and signed by the parties is conclusive evidence as to the matters stated. (L. P. A. 1922, 15th Sched. s. 14.) Costs of and incidental to the agreement fall on the lessee or underlessee. (*Ibid.*)

Any claim for compensation by the lessor's solicitor or agent in respect of remuneration for work that would be done on renewal (other than work rendered unnecessary in virtue of this Act) is, as between lessor and lessee, to be treated as compensation due to the lessor, included in the calculation of the additional rent due, and to be discharged thereout or out of the commutation money or otherwise by the lessor, the lessee not being concerned therewith. (L. P. A. 1922, 15th Sched. s. 15.) Any dispute between the lessor and his solicitor as to this compensation is to be decided by the Minister of Agriculture, to whom in general disputes between lessor and lessee as to compensation are referred. The decision of the Minister, subject to any right of appeal to the Court to be prescribed by rules of Court, is to be final. (L. P. A. 1922, 15th Sched. s. 16 (1).) The Minister may issue regulations as to these matters and determine by whom and in what proportions the costs of applications to him shall be paid. (L. P. A. 1922, 15th Sched. s. 16 (2).) Provision is made as to the basis on which the Minister is to settle disputes as to the amount for which any annual instalment by additional rent ought to be commuted. (L. P. A. 1922, 15th Sched. s. 16 (3).) But unless the Minister otherwise directs, the compensation is to be regulated by the practice (if any) which obtained before the Act. (L. P. A. 1924, 2nd Sched. 5 (9.)

Powers authorising tenants for life of full age, statutory owners, trustees and others to apply or raise monies for the expense of renewal are to be taken as authorising commutation of the additional rent payable under the Act, and discharge of compensation to solicitors and agents. (L. P. A. 1922, 15th Sched. s. 17. See also S. L. A. ss. 71 and 73.)

If the reversion is settled or held on trust for sale, commutation monies are treated as capital monies or as proceeds of sale. (*Ibid.*)

Where the lease or sub-lease is settled or held upon trust for sale, commutation monies may be paid out of capital monies or personal estate (other than chattels real) held upon the same trusts. (*Ibid.*)

Certain contracts for renewal of leaseholds avoided.—After the commencement of the Act a contract to renew a lease or sub-lease for a term exceeding sixty years from the termination of the original lease or sub-lease is void. (L. P. A. 1922, 15th Sched. s. 7 (2).)

Powers to grant leases for lives.—Powers to grant leases or under-leases at a rent or in consideration of a fine for a life or lives, or a term dependent on a life or lives or marriage, in future will take effect as powers to grant a lease or under-lease for a term not exceeding ninety years determinable after the death or marriage, as the case may be, of the original lessee or survivor of the original lessees by a month's notice in writing on either side expiring with one of the usual quarter days. (L. P. A. 1922, 15th Sched. s. 8.) It is, perhaps, noteworthy that this provision does not in all respects follow the provisions as to the effect of a lease for life or lives formerly contained in sect. 7 (3) of the 15th Schedule (and now in L. P. A. 1925, s. 149, *post*), and appears not to contemplate the life or lives of any person other than a lessee.

Provisions similar to those already noted in respect of the two thousand year terms created by the Act regarding the liability for rent and on the tenant's covenants apply equally to these ninety year terms. Liability only attaches to the tenant while the term continues vested in him. (L. P. A. 1922, 15th Sched. s. 11, *ante*, p. 91.)

LAW OF PROPERTY ACT, 1925.

The Act is divided into 12 Parts and 7 Schedules:—

Part I.—General Principles as to Legal Estates, Equitable Interests and Powers. (Sects. 1 to 39.)

Part II.—Contracts, Conveyances and other Instruments. (Sects. 40 to 84.)

Part III.—Mortgages, Rent-charges and Powers of Attorney. (Sects. 85 to 129.)

Part IV.—Equitable Interests and things in Action. (Sects. 130 to 138.)

Part V.—Leases and Tenancies. (Sects. 139 to 154.)

Part VI.—Powers. (Sects. 155 to 160.)

Part VII.—Perpetuities and Accumulations. (Sects. 161 to 166.)

Part VIII.—Married Women and Lunatics. (Sects. 167 to 171.)

Part IX.—Voidable Dispositions. (Sects. 172 to 174.)

Part X.—Wills. (Sects. 175 to 179.)

Part XI.—Miscellaneous. (Sects. 180 to 200.)

Part XII.—Construction, Jurisdiction and General Provisions. (Sects. 201 to 209.)

Schedules.

Schedule I.—Transitional Provisions.

Schedule II.—Implied Covenants.

Schedule III.—Forms of Transfer and Discharge of Mortgages.

Schedule IV.—Forms relating to Statutory Charges or Mortgages of Freehold or Leasehold Land.

Schedule V.—Forms of Instruments.

Schedule VI.—Epitomes of Abstracts of Title.

Schedule VII.—Enactments repealed.

PART I.—(Sects. 1 to 39.)

General Principles as to Legal Estates, Equitable Interests and Powers. (Sects. 1 to 15.)

Legal estates and interests curtailed.—Sect. 1 cuts down to a minimum the kinds of interests capable of subsisting in land at law. An outline of the section is given below; it is dealt with more fully in the Introduction, *ante*, p. 8.

After 1925 the only estates in land which will be capable of subsisting or of being conveyed or created at law will be—

(a) An estate in fee simple absolute in possession;
(b) A term of years absolute. (Sect. 1 (1).)

The only interests or charges in or over land which will be capable of subsisting or of being conveyed or created will be—

(a) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;
(b) A rent-charge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;
(c) A charge by way of legal mortgage;
(d) Land tax, tithe rent-charge, and any other similar charge on land which is not created by an instrument;
(e) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rent-charge. (Sect. 1 (2).)

These estates, &c., when subsisting or conveyed or created at law, are termed "legal estates," and have the same incidents as legal estates subsisting at the commencement of the Act; and the owner of a legal estate is called "an estate owner." (Sect. 1 (4); sect. 205 (x).)

A legal estate may subsist concurrently with or subject to any other legal estate. (Sect. 1 (5).)

A legal estate cannot subsist or be created in an undivided share in land, or be held by an infant. (Sect. 1 (6). See sect. 34, *post*, as to undivided shares, and sect. 19, *post*, as to infants.)

All other estates, interests, and charges in or over land will take effect only as equitable interests (sect. 1 (3)), and if they exist at law at midnight of the 31st December, 1925, the Act will convert them

into equitable interests at the first moment of 1926. (Sect. 39; 1st Sched.) They are termed "equitable interests." (Sect. 1 (8); sect. 205 (x).)

Powers.—In the same way as the Act cuts down legal estates, so it reduces the number of legal powers. The only powers left to operate at law after 1925 are (a) a power vested in a legal mortgagee (see sects. 8 and 104, *post*); (b) a power vested in an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf; and (by sects. 7 and 8, *infra*) (c) special statutory powers, *e.g.*, under sect. 77 of the Lands Clauses Consolidation Act, 1845. (See note at end of Specimen No. 1 of Epitomes of Abstracts of Title in the 6th Sched., *post*.) These powers still operating at law are called "legal powers," and they include the powers vested in a chargee by way of legal mortgage. (Sect. 205 (xi).) All other powers of appointment over, or powers to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the Act, will operate only in equity (sect. 1 (7)), and are termed "equitable powers." (Sect. 1 (8); sect. 205 (xi).)

Repeal of Statute of Uses.—In pursuance of this policy of converting various legal interests into equitable, L. P. A. repeals the Statute of Uses and sect. 62 of the C. A. 1881, which was a sort of annex to the Statute of Uses in that it enabled an easement, right, liberty or privilege in or over or with respect to land to be created by a conveyance to uses. The Statute of Uses in 1535 converted various equitable interests, such as springing and shifting uses, into legal interests. Nearly 400 years later the Act of 1925 reconverts them into equitable interests. But this repeal does not affect dealings taking effect before 1926. (Sect. 1 (10).)

The repeal of the Statute of Uses renders necessary the provision of sect. 1 (9) that the provisions in any statute or other instrument requiring land to be conveyed to uses are to take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by the Act which may be required) be conveyed to a person of full age upon the requisite trusts. It also renders necessary sect. 65, which allows reservations of interests for legal estates created *de novo* (such as a rent-charge, an easement or a right to work excepted minerals) to take effect without a grant

from the person to whom the land is conveyed; sect. 66, which provides a method of confirming legal estates which, by reason of some technical defect, may be invalid, and the subsequent dealings with such estates; sect. 4 (1), which says that, save as otherwise expressly provided by statute, interests in land which under the Statute of Uses or otherwise could before the Act have been created as legal interests shall be capable of being created as equitable interests; and sect. 72 (3), which allows a person to convey land to himself.

Conveyances overreaching certain equitable interests and powers.—The main scheme of the L. P. A. is to cut down legal estates in land to a minimum, to turn all other interests into equitable, and provide methods by which, as far as possible, an estate owner will be able to convey the land to a purchaser free from them. The first part of this scheme is accomplished by sect. 1. The provisions by which equities can be overreached are for the most part contained in sect. **2.**

Before proceeding to deal with the section, it may be useful to remind our readers that it only affects *equitable* interests. Legal interests, of course, a purchaser takes subject to, whether he has notice of them or not, except such as ought to be registered under the L. C. A. but are not. (See L. C. A., *post*.) Legal leases, legal easements either in fee simple absolute or for a term of years absolute, legal rent-charges either perpetual or for a term of years absolute, and legal mortgages (except certain unregistered puisne mortgages (see *post*, under L. C. A.))—all these are binding on a purchaser. But, as already pointed out, the number of possible legal interests is very much cut down by the L. P. A. and the number of equitable interests correspondingly increased, so that the section is of very great importance and requires most careful consideration. We will begin by setting it out *in extenso*. It runs as follows:—

Sect. 2.—(1) A conveyance to a purchaser of a legal estate in land shall overreach any equitable interest or power affecting that estate, whether or not he has notice thereof, if—

(i) the conveyance is made under the powers conferred by the Settled Land Act, 1925, or any additional powers conferred by a settlement, and the equitable interest or power is capable of being overreached thereby, and the statutory requirements respecting the payment of capital money arising under the settlement are complied with;

(ii) the conveyance is made by trustees for sale and the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees under the provisions of subsection (2) of this section or independently of that subsection, and the statutory requirements respecting the payment of capital money arising under a disposition upon trust for sale are complied with;

(iii) the conveyance is made by a mortgagee or personal representative in the exercise of his paramount powers and the equitable interest or power is capable of being overreached by such conveyance, and any capital money arising from the transaction is paid to the mortgagee or personal representative;

(iv) the conveyance is made under an order of the Court and the equitable interest or power is bound by such order and any capital money arising from the transaction is paid into or in accordance with the order of the Court.

(2) Where the legal estate affected is not, when the equitable interest or power is created, subject to a trust for sale or a settlement, then, if the estate owner, whether before or after the commencement of this Act, disposes of his estate to trustees upon trust for sale, and at the date of a conveyance made, after such commencement, under the disposition upon trust for sale the trustees (whether original or substituted) are either—

(a) two or more individuals approved or appointed by the Court or the successors in office of the individuals so approved or appointed; or

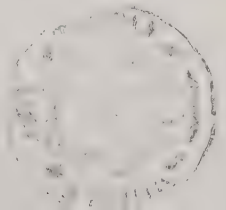
(b) a trust corporation;

such equitable interest or power shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale.

(3) The following equitable interests and powers are excepted from the operation of subsection (2) of this section, namely—

(i) Any equitable interest protected by a deposit of documents relating to the legal estate affected;

(ii) The benefit of any covenant or agreement restrictive of the user of land;



(iii) Any easement, liberty, or privilege over or affecting land and being merely an equitable interest (in this Act referred to as an "equitable easement");

(iv) The benefit of any contract (in this Act referred to as an "estate contract") to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of pre-emption, or any other like right;

(v) Any equitable interest protected by registration under the Land Charges Act, 1925, other than—

(a) an annuity within the meaning of Part II. of that Act;

(b) a limited owner's charge or a general equitable charge within the meaning of that Act.

(4) Subject to the protection afforded by this section to the purchaser of a legal estate, nothing contained in this section shall deprive a person entitled to an equitable charge of any of his rights or remedies for enforcing the charge.

(5) So far as regards the following interests, created before the commencement of this Act (which accordingly are not within the provisions of the Land Charges Act, 1925), namely—

(a) the benefit of any covenant or agreement restrictive of the user of the land;

(b) any equitable easement;

(c) the interest under a puisne mortgage within the meaning of the Land Charges Act, 1925, unless and until acquired under a transfer made after the commencement of this Act;

(d) the benefit of an estate contract, unless and until the same is acquired under a conveyance made after the commencement of this Act;

a purchaser of a legal estate only takes subject thereto if he has notice thereof, and the same are not overreached under the provisions contained or in the manner referred to in this section.

So far as the first sub-section is concerned, little alteration, if any, appears to be made in the present law. It seems merely to state familiar law. A sale under the S. L. A. powers, or powers given expressly by a settlement, or by trustees under a trust for sale, or by a mortgagee or personal representative, or under an order of the Court, will even to-day confer on the purchaser a title free from

interests which are capable of being overreached by such a conveyance, whether the purchaser has notice of the interest or not. In fact, the statement is a truism. The equity will be overreached if it can be overreached. As regards these matters, therefore, any simplification which the new Acts effect must be looked for elsewhere than in this section. It will be found in the extended powers given to limited owners, to trustees holding on trust for sale, and to personal representatives. (See *ante*, p. 19.)

The second sub-section, however, is novel. It enables an estate owner, whose estate is subject to an equitable interest, to overreach that interest, unless it is one of the numerous excepted interests, by creating an *ad hoc* trust for sale. He may convey the land to two or more trustees approved or appointed by the Court, or to a trust corporation, and the trustees or trust corporation will then be able to sell free from the equitable interest which will attach to the proceeds of sale which will be paid to the trustees or trust corporation. In practice, probably, to avoid the expense of obtaining the Court's appointment or approval of the trustees, the alternative scheme of conveying to a trust corporation will be adopted. The *ad hoc* trust for sale, it will be noticed, may be created before the Act comes into operation, but no conveyance under the trust can be made till after the Act is in operation.

But there are numerous and important exceptions contained in sub-sect. (3) to this power to shift equitable interests from the land to the proceeds of sale. Indeed, the exceptions are so many that the operation of sub-sect. (2) appears to be practically very small.

In order to understand what can and what cannot be overreached, it is necessary to compare this sect. 3 with the L. C. A., which is dealt with fully, *post*. The draftsmanship is not very happy, and we do not feel confident that we have got the interpretation right, but it seems to us that the position will be as follows:—

What cannot be overreached.

(1) An equitable interest protected by deposit of documents relating to the legal estate affected.

(2) A restrictive covenant. [But the purchaser will take free from this if (not being a covenant between lessor and lessee) it was entered into after 1925 and not registered as a land charge before the completion of the purchase, or, if it was entered into before 1926, he will take free from it if he had no notice of it.]

(3) An equitable easement. [Here, too, the purchaser will take free from the easement if it was created after 1925 and not registered as a land charge, or, if created before 1926, he had no notice.]

(4) An estate contract. [Here, again, the purchaser will take free from the contract if it was entered into after 1925 and not registered as a land charge, or, if entered into before 1926, he had no notice of it, or if more than a year has elapsed from the first conveyance of the contract occurring after 1925 and it is not registered as a land charge before the completion of the purchase.]

(5) A puisne mortgage (see *post*, p. 346). This is a *legal* interest and therefore not within sub-sect. (2). [But a purchaser will take free from it if it is created after 1925 and not registered as a land charge before completion of the purchase, or, if created before 1926, he will take free from it if he has no notice of it, or if more than a year has elapsed from the first transfer of the mortgage occurring after 1925 and it is not registered as a land charge before completion of the purchase.]

(6) Registered pending actions, registered writs and orders affecting land, registered deeds of arrangement, registered land charges of Class A. and Class B., registered charges for death duties acquired by the Inland Revenue Commissioners, and registered local land charges. As to the position when these instruments or matters are not duly registered, reference should be made to L. C. A. (*post*, pp. 341 *et seq*).

What can be overreached.

(1) An annuity within the Judgments Act, 1855, now replaced by sects. 4 and 5 of L. C. A., *i.e.*, an annuity for life or lives or years determinable on a life or lives, not created by a marriage settlement or a will.

(2) A charge acquired by a limited owner under the Finance Act, 1894, or other statute, by reason of his having discharged death duties or other liabilities.

(3) A general equitable charge as defined by sect. 10 of L. C. A. (*Post*, p. 346.)

These three equitable interests can be overreached even though they are registered. (L. C. A. s. 22.)

(4) Whatever other equitable interests there may be not already mentioned. Most of these will be capable of being overreached without resorting to sub-sect. (2), for they will probably arise under a settlement, a trust for sale, or will or mortgage. So that the net result of sect. 2 appears to be really very small.

Sect. 21 of S. L. A., *post*, provides an alternative method of overreaching equities. A person of full age beneficially entitled in possession to a legal estate subject to any equitable interests or powers may, for the purpose of overreaching such interests or powers, declare that the legal estate is vested in him on trust to give effect to all equitable interests and powers affecting the same, and thereby obtain the powers of a tenant for life. This he may do notwithstanding any stipulation to the contrary. But there are the same exceptions to sect. 21 as there are to sub-sect. 2 of sect. 3.

Manner of giving effect to equitable interests and powers.—Although equitable interests and powers can in many cases be overreached in favour of a purchaser, the Act is very careful to protect all equities from failure. Sect. **3** provides for their enforcement against the owner of the legal estate. The short effect of the section is to make the legal owner a trustee for everyone of whose interests he knows, without prejudice to the due exercise of his legal powers of dealing with the land.

There are three classes of persons dealt with in the section, viz.: (1) A tenant for life or statutory owner. (2) Trustees for sale. (3) Other estate owners.

(1) A tenant for life or statutory owner, *i.e.*, usually the trustees of the settlement when there is no tenant for life of full age (S. L. A. s. 117 (xxvi)), is to stand possessed of the settled land and the income thereof upon trust to give effect to the equitable interests and powers of which he has notice according to their respective priorities. (See S. L. A. s. 16, *post*.)

(2) Trustees for sale are to stand possessed of the net proceeds of sale after payment of costs, and of the net rents and profits till sale after payment of rates, &c., upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the same, of which they have notice, according to their respective priorities. "Trustees for sale,"

says sect. 205 (xxix), means the persons (including a personal representative) holding land on trust for sale.

But there are two cases in which the trustees are required to create a legal estate to take priority over the trust for sale. (a) One is where a principal sum is required to be raised by reason of the exercise of any equitable power or under any trust affecting the proceeds of sale. Here, unless the claim is satisfied out of the proceeds of sale, the trustees must, if requested in writing, create a legal mortgage to raise the money. (b) And similarly, if any person of full age becomes entitled to require a legal estate to be vested in him in priority to the trust for sale, the trustees must transfer the necessary legal estate to him. Thus, if there is a person absolutely entitled to the proceeds of sale, he could require the trustees to vest the land in him instead of selling it. But if the persons entitled are entitled in undivided shares, *i.e.*, as tenants in common, they cannot insist on the land being conveyed to them in undivided shares, but may require it to be vested in any of them (not exceeding four) as joint tenants on trust for sale. The reason of this is that tenancy in common is abolished. (See sect. 34, *post*.)

(3) Other estate owners.—Where the legal estate affected is neither settled land nor vested in trustees for sale, the estate owner is bound to give effect to the equitable interests and powers of which he has notice according to their priorities. But this does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for purposes of administration. (Sect. 3 (1).)

This section appears to be specially aimed at a tenant in fee simple absolute who is beneficially entitled, but is subject to some equitable interest.

Legal effect to be given to certain equitable interests.—By sect. 3 (2) legal effect may be given by means of a mortgage to an agreement for a mortgage, a charge or lien if the agreement, charge, or lien ought to have priority over the trust for sale. Further by sect. 3 (3) where, by reason of a statutory or other right of reverter, or an equitable right of entry taking effect or for any other reason, a person becomes entitled to require a legal estate to be vested in him, the estate owner will be bound to convey or create the required legal estate. For instance, if the land is subject to a rent-charge for life and the rent is not paid and the owner of the rent-charge becomes entitled to enter, this right, being an equitable right only, would

apparently come within this provision. (See sects. 8 and 121, *post*; and cp. the third note in Specimen No. 3 of Epitomes of Abstracts of Title in 6th Sched., *post*.)

The Court may settle any question whether any and what legal estate ought to be transferred or created (sect. 3 (4)), and may make vesting orders if there is any difficulty in getting the estate owner to transfer or create the required legal estate. (Sect. 3 (5).)

The section does not affect a purchaser of a legal estate taking free from an equitable interest or power. (Sect. 3 (6).)

Creation and disposition of equitable interests.—By sect. **4**, interests in land validly created or arising after 1925, which are not capable of subsisting as legal estates, will take effect as equitable interests, and, save as otherwise expressly provided by statute, interests in land which under the Statute of Uses or otherwise could before 1926 have been created as legal interests will be capable of being created as equitable interests. But, except as expressly enacted by the Act, an equitable interest in land will only be capable of being validly created in any case in which an equivalent equitable interest in property real or personal could have been validly created before 1926. (Sect. 4 (1).)

All rights and interests in land may be disposed of, including (a) a contingent, executory or future equitable interest, or a possibility coupled with an interest whether or not the object of the gift or limitation of such interest or possibility be ascertained; (b) a right of entry whether immediate or future, vested or contingent. (Sect. 4 (2).)

All rights of entry affecting a legal estate may after 1925 be made exercisable by any person and the persons deriving title under him, but in regard to a fee simple estate (not being a legal rent-charge) only within the period allowed by the perpetuity rule. (Sect. 4 (3).)

Satisfied terms.—The Satisfied Terms Act, 1845, is repealed. Instead, it is provided by sect. **5** that (1) where the purposes of a term of years created or limited at any time out of freehold land become satisfied, either before or after the Act (whether or not that term by express declaration or by construction of law becomes attendant on the freehold reversion), it shall merge in the reversion and cease; (2) where the purposes of a term of years created or limited at any time out of leasehold land become satisfied after 1925, that term shall merge in the reversion and cease; (3) where the purposes

are satisfied as to part only of the land, this section is to have effect as if a separate term had been created in that part.

Similar provisions are contained in 1st Sched. Part II. as to subterms satisfied before 1926. (See *post*, p. 121.)

The Act of 1845 is thus made to apply to a term of years created out of leaseholds, to which it does not at present apply. (See *e.g.*, *Re Moore and Hulm's Contract*, (1912) 2 Ch. 105.)

Saving of lessors' and lessees' covenants.—Sect. **6** provides that nothing in this Part of the Act is to affect prejudicially the right to enforce any lessor's or lessee's covenants, agreements or conditions (including a valid option to purchase or right of pre-emption over the reversion), contained in any such instrument as is in this section mentioned, the benefit or burden of which runs with the reversion or the term. (See L. P. A. ss. 141 and 142.) This section applies where the covenant, &c. is contained in any instrument (a) creating a term of years absolute, or (b) varying the rights of the lessor or lessee under the instrument creating the term.

It should be remembered, however, by a lessee whose lease made after 1925 gives him an option to purchase, and by an assignee after 1925 of a lease conferring such an option made before 1926, that, unless he registers his option as a land charge under L. C. A., it will be void against a purchaser. (See L. C. A. ss. 10, 13 and 14, *post*.)

Saving of certain legal estates and statutory powers.—A fee simple which, by virtue of the Lands Clauses Acts, the School Sites Acts, or any similar statute, is liable to be divested, is for the purposes of the Act a fee simple absolute, and remains liable to be divested as if the Act had not been passed. (Sect. **7** (1).)

A fee simple vested in a corporation which is liable to determine by reason of the dissolution of the corporation is, for the purposes of the Act, a fee simple absolute. (Sect. 7 (2).)

The same section (sect. 7 (3)) keeps in force the provisions of the Forfeiture Act, 1870, in regard to the land of a convict; and the Friendly Societies Act, 1896, in regard to land to which that Act applies; and of any other statutes (*e.g.*, sect. 77 of the Lands Clauses Act, 1845) conferring special facilities or prescribing special modes for disposing of or acquiring land, or providing for the vesting of the land in trustees or any person, or the holder for the time being of an office or any corporation sole or aggregate (including

the Crown). But this sub-section is not to authorise an entailed interest to take effect otherwise than as an equitable interest.

Where any such power for disposing of or creating a legal estate is exercisable by a person who is not the estate owner, the power must, when practicable, be exercised in the name and on behalf of the estate owner. (Sect. 7 (4).)

Saving of certain legal powers to lease.—All leases or tenancies at a rent for a term of years absolute authorised to be granted by a mortgagor or mortagee, or by S. L. A. or any other statute, may be granted in the name and on behalf of the estate owner by the person empowered to grant the same, whether he is an estate owner or not, with the same effect and priority as if this Part of the Act had not been passed; but this section does not authorise the person granting a lease in the name of an estate owner to impose any personal liability on him, except as respects the usual qualified covenant for quiet enjoyment. (Sect. **8** (1).)

The owner of a legal rentcharge, *i.e.*, a rentcharge in possession being either perpetual or for a term of years absolute, may under his statutory power (L. P. A. s. 121, *post*), or under any corresponding power, create a legal term of years absolute for securing or compelling payment of it; but in other cases (*e.g.*, where it is a rentcharge for life, terms created under any such power will, until the estate owner gives legal effect to the transaction (see sect. 3 (3), *ante*, p. 106), take effect only as equitable interests.

Vesting orders and dispositions of legal estates operating as conveyances by an estate owner.—Vesting orders, vesting declarations, vesting instruments under S. L. A. (see *post*, p. 225), conveyances under an order of Court or statutory power or any power reserved or conferred by the Act, are to operate as conveyances by the estate owner. (Sect. **9** (1).) Where the order, declaration, or conveyance is made in favour of a purchaser, the provisions of the Act relating to a conveyance of a legal estate to a purchaser are to apply (see *e.g.*, sect. 2). (Sect. 9 (2).) The provisions of T. A. ss. 44 *et seq.*, *post*, apply to vesting orders authorised to be made by this Part of the Act. (Sect. 9 (3).)

Title to be shown to legal estates.—To assist in keeping equities off the title, sect. **10** provides, with regard to abstracts, that, where interests or powers will be over-reached by the conveyance, it is not necessary or proper to include in the abstract an instrument

relating only to them, and a solicitor will not be liable for omitting the instrument nor will any liability be implied by reason of its inclusion. But equitable interests or powers not over-reached must be disclosed and the instrument abstracted.

Registration in Yorkshire and Middlesex.—Instruments made after 1925 need not be registered in any local deeds registry unless they transfer or create a legal estate or create a charge by way of legal mortgage; nor will the registration of an instrument not requiring registration affect priority. Probates and letters of administration are to be treated as instruments capable of transferring a legal estate to the personal representatives—which means, apparently, that they may and should be registered. All instruments capable of transferring or creating a legal estate or charge by way of legal mortgage may, when so operating, be registered. (Sect. **11.**) See, further, as to registration in Yorkshire or Middlesex, L. P. A. s. 197, *post;* and sect. 18 of L. C. A., *post.*

Limitation and prescription.—The statutes and general law as regards limitation of actions and prescription are not affected by the Act. (Sect. **12.**)

Possession of documents.—The L. P. A. is not prejudicially to affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor is it to affect any question arising out of or consequent upon any omission to obtain or any other absence of possession by any person of any documents relating to a legal estate in land. (Sect. **13.**) This preserves the equitable rules of priority so far as they depend on the possession of title deeds or the omission to obtain or retain them. (See Snell's Equity, pp. 29 *et seq.*) It also preserves the rights of equitable mortgagees by deposit of title deeds. (Cf. sect. 2 (3) (i), *ante,* p. 101.)

Interests of persons in possession.—This Part of the Act is not prejudicially to affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation. (Sect. 14.)

Presumption that parties are of full age.—The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed to be of full age at the date thereof. (Sect. 15.) This is important in view of the new law that a conveyance to an infant passes no legal estate to him. (S. L. A. s. 27, *post.*)

DEATH DUTIES. (Sects. 16 to 18.)

Death duties.—Special provisions as to these are to be found in sects. **16, 17** and **18** of the Act. The general scheme of the section is to make liability to death duties incidental to the ownership of the legal estate except in the hands of a purchaser for money or money's worth (L. P. A. s. 205 (xxi)) as mentioned below. This is, however, without prejudice to existing liabilities and without affecting the ultimate incidence of the duty on beneficial owners.

Registration of charge for duties.—In future the Commissioners of Inland Revenue will be able to register a charge for death duties where such exists under L. C. A. s. 10, *post*. "Death duty" means estate duty, succession duty and legacy duty, and every other duty leviable or payable on a death. (Sect. 205 (iv).)

Purchasers and duties.—Purchasers of a legal estate for money or money's worth in future will take free from any claim to death duties unless (1) the charge therefor is registered, or (2) the charge attached before the commencement of the Act and the purchaser had notice of the facts giving rise to the charge. (Sect. 17 (1).) On the other hand, a conveyance of the legal estate to anyone other than a purchaser for money or money's worth will take effect subject to any charge for duty, whether the charge has been registered or not. (Sect. 17 (4); sect. 16 (4).) Where the charge for duties is not registered, so that the purchaser takes free therefrom, the grantor will be liable in respect of such duties, and the proceeds of sale will be charged with them. (Sect. 17 (2).)

All death duties remaining unpaid, even those payable by instalments, become payable forthwith with interest at 4 per cent. on any conveyance of the legal estate by way of sale, exchange or mortgage, if the person conveyed to will take free from the charge. Where as a result the amount payable is more than would have been the case had payment been made by instalments, the Inland Revenue is to refund the excess. (Sect. 17 (3).)

Sect. 17 does not apply to registered land, as to which, see *post*, p. 367.

Parties accountable.—After 1925 liability for duty in respect of land (including settled land) will fall either (1) on the personal representative on whom the land devolves (including an executor *de son tort:* sect. 205 (xviii)), or (2) in every other case on the

"estate owner," *i.e.*, the person having the legal estate, other than a purchaser who acquires a legal estate after the charge for duties has attached, and who takes free from the charge as above mentioned. (Sect. 16 (1) and (2).) But a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position is only liable for duties to the extent to which he received assets (including land) available for payment or might have so received them but for his own default (sect. 16 (6)), and the liability imposed by this Act on personal representatives and estate owners is without prejudice to the liability of the persons beneficially interested, who remain liable as heretofore and accountable to the Inland Revenue Commissioners or to the personal representative or other person made accountable by the Act. (Sect. 16 (5).) It must be borne in mind also that the Act does not alter any duty payable in respect of land (sect. 16 (4)), or impose a charge for duties on leasehold land (sect. 16 (6)), nor do the extensive changes in the law of succession made by A. E. A. alter the duties or their incidence. (A. E. A. s. 53, *post*.)

Powers for raising duty.—Powers are given to the persons by the Act made liable for duties to raise funds for payment. (Sect. 16 (3).) Thus capital money liable to be used in the purchase of land to be settled in the same manner as the land on which the duty is payable can be utilised for payment, and so can personal estate held on the same trusts as the proceeds of sale of land, being land held on trust for sale in respect of which the duty is payable, but this is not to affect the ultimate incidence. (Sect. 18.)

Certificate of discharge.—The Commissioners of Inland Revenue may give a certificate that the land is discharged from any claim, which certificate will be sufficient authority for the cancellation of any charge which has been registered in respect of duty. (Sect. 16 (7).)

Infants and Lunatics. (Sects. 19 to 22.)

Conveyances of legal estates to infants.—The Act having provided by sect. 1 (6) that a legal estate is not to be held by an infant, sect. **19** explains the effect of an attempted conveyance of a legal estate to an infant after the Act. The effect of the Act on legal estates vested in infants at its commencement is stated later. (See sect. 39, *post*, p. 123.) But sect. 19 does not by itself cover

the whole ground. It must be read with sect. 27 of S. L. A. The effect of the provisions read together is as follows:—

(1) Conveyance to infant beneficially.—A conveyance after the Act of a legal estate to an infant, or to two or more persons jointly, both or all of whom are infants, for his or their own benefit, will operate only as an agreement for valuable consideration to execute a settlement by means of a principal vesting deed and a trust instrument in favour of the infant or infants, and meantime to hold on trust for the infant or infants. (S. L. A. s. 27 (1).)

A conveyance of a legal estate to an infant jointly with another person of full age will operate to vest the legal estate in the other person on the statutory trusts (see L. P. A. s. 35, *post*), but not so as to sever any joint tenancy in the net proceeds of sale, or in the rents and profits till sale, or affect the right of a tenant for life or statutory owner to require settled land to be vested in him. (L. P. A. s. 19 (2).) The last few words mean, apparently, that the sub-section is only to apply when the estate conveyed is a fee simple absolute, or a term of years absolute. If the interest is a limited one, the person of full age will be entitled to have the legal estate vested in him not on trust for sale, but as tenant for life under S. L. A. (See S. L. A. s. 19 (3).)

(2) Conveyance to infant on trust.—If a conveyance is made to an infant or infants alone on trust, the legal estate will not pass; the conveyance will operate as a declaration of trust only. (L. P. A. s. 19 (4).) If the conveyance is to the infant jointly with another person of full age, it will operate as if the infant had not been named, without prejudice, however, to any beneficial interest of the infant. (*Ibid.* s. 19 (5).)

(3) Mortgage to infant.—A grant or transfer of a legal mortgage of land to an infant alone will operate only as an agreement for valuable consideration to execute a proper conveyance on his attaining full age and meantime to hold any beneficial interest in the mortgage debt on trust; if to an infant and another person of full age, it will operate as if the infant had not been named, without prejudice to his beneficial interest. (L. P. A. s. 19 (6).)

The Acts do not prevent an equitable interest in settled land being vested in or transferred to an infant, nor do they affect the powers conferred by the Infant Settlements Act, 1855, provided that a

legal estate in land is not vested in an infant. (S. L. A. s. 27 (2) and (3).)

Infant not to be appointed trustee.—After the Act the appointment of an infant to be trustee in relation to any settlement or trust will be void, but without prejudice to the power to appoint a new trustee to fill the vacancy. (L. P. A. s. **20**; see T. A. s. 36, *post*.) As to infant executors, see A. E. A. s. 20, *post*.

Receipts by married infants.—Sect. **21** allows a married infant to give valid receipts for all income, including statutory accumulations of income made during the minority. A similar power is given by sect. 31 of T. A., *post*, and by sect. 47 of A. E. A., *post*.

Lunatics and defectives.—Where a legal estate in land (whether settled or not) is vested in a lunatic, whether so found or not (sect. 205 (xiii)), or in a defective, either solely or jointly, his committee or receiver must make all requisite dispositions for conveying a legal estate on his behalf. If the land is held on trust for sale, a new trustee must be appointed or the lunatic or defective must be otherwise discharged before the legal estate is dealt with. (Sect. **22**.)

Dispositions on Trust for Sale. (Sects. 23 to 33.)

Sects. **23** to **33** contain various provisions which, so far as they are new, are intended, according to sect. 11 of L. P. A. 1922—

(i) To protect purchasers acquiring land under a trust for sale;
(ii) To protect the persons beneficially interested in the proceeds of sale or in the land until sale;
(iii) To facilitate dealings with land held on trust for sale, including a partition among the persons interested.

The sections apply, except where the contrary is stated below, whether the trust for sale was created before or after the Act; and they apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers for purposes of administration. (Sect. **33**.) In view of the numerous trusts for sale created by the new Acts, *e.g.*, in the case of undivided shares (L. P. A. s. 35) and on an intestacy (A. E. A. s. 33), the sections are specially important. Some of them are old, viz., sect. **23**, which replaces sect. 10 (3) and (4) of C. A., 1911 (making trusts for sale continue, for the protection of a purchaser, until the land

has been conveyed to the beneficiaries); sect. **31**, which repeats sect. 9 of C. A., 1911 (creating a trust for sale of property mortgaged to trustees where the right of redemption is barred), with an added clause that it is to apply whether the right of redemption was discharged before or after 1st January, 1912, but is to have effect without prejudice to any dealings or arrangements before that date; and sect. **32**, which replaces sect. 10 (1) and (2) of C. A. 1911 (implying a trust for sale in personalty settlements).

The new provisions of the sections may be summarised as follows:—

(1) Appointment of trustees.—The persons having power to appoint new trustees of a conveyance on trust for sale must appoint the same persons (if any) who are for the time being trustees of the settlement of the proceeds of sale. But a purchaser is not concerned to see whether the proper persons are appointed. (Sect. **24.** Cp. T. A. s. 35, *post*.)

(2) Power to postpone sale is implied unless a contrary intention appears. Where there is power to postpone, trustees are not liable for postponing for any indefinite period, unless there is an express direction to the contrary. In no case is a purchaser of a legal estate concerned with any directions respecting postponement. In a disposition or settlement coming into operation after 1925 a trust either to retain or sell will be construed as a trust to sell with power to postpone. (Sect. **25.**) But if the trustees refuse to sell, application may be made to the Court by any person interested for an order directing them to sell. (Sect. **30.**)

(3) Consents.—If the consent of more than two persons is made requisite by the disposition to the sale, the consent of any two is sufficient in favour of a purchaser. Where the person whose consent is required is under disability, his consent is not, in favour of a purchaser, to be deemed requisite, though it is the trustees' duty to obtain the consent of the parent or guardian of an infant, or of the committee or receiver (if any) of a lunatic or defective. (Sect. **26.**) If any requisite consent cannot be obtained, any person interested may apply to the Court. (Sect. **30.**)

As far as practicable, the trustees must give effect to the wishes of the persons of full age beneficially interested in possession in the rents, or, in case of dispute, of the majority in value. But this does not concern a purchaser. (Sect. **26.**)

(4) Purchaser not concerned with trusts.—A purchaser of a legal estate from trustees for sale is not to be concerned with the trusts of the proceeds of sale even if declared by the instrument which created the trust for sale. But the proceeds of sale or other capital money must, notwithstanding any contrary direction, be paid to or by the direction of at least two trustees or a trust corporation. (Cp. T. A. s. 14 (2), *post*.) This, however, is not to affect the right of a sole personal representative as such to give valid receipts, nor to render it necessary to have more than one trustee if no capital money arises on a transaction. (Sect. **27**.)

(5) Powers of management, &c. conferred on trustees for sale.—Trustees for sale are to have all the powers of a tenant for life and the trustees of a settlement under S. L. A., including the powers of management during a minority conferred by sect. 102 of that Act, which replaces sect. 42 of C. A. 1881. But these powers are to be exercised with such consents (if any) as would have been required on a sale under the trust for sale. (Sect. **28** (1).) If the trustees refuse to exercise any of these powers, any person interested may apply to the Court. (Sect. **30**.) Where, before 1926, the tenant for life has obtained an order allowing him to exercise any of the Settled Land Acts powers, he must exercise the power in the names of the trustees. (Sect. 29 (4).) Such an order cannot be made in future, S. L. A. no longer conferring any such power in the case of a trust for sale.

Until sale, the net rents are to be applied in the same way as the income of the investments of the proceeds of sale would be applied, except so far as any part may have to be set aside as capital under S. L. A. (*e.g.*, part of the rent of a mining lease). (Sect. **28** (2).)

(6) Power to partition instead of selling.—Where the net proceeds of sale have, under the trusts affecting the same, become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may partition the land remaining unsold or any part thereof, and may provide (by way of mortgage or otherwise) for the payment of any equality money, and make the necessary conveyances. The consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents until sale must be obtained, but a purchaser is not concerned to see whether such consent has been given. Where a share belongs to a lunatic or defective the consent

of his committee or receiver will be sufficient to protect the trustees. (Sect. **28** (3).) If one of the shares is absolutely vested in an infant, the trustees may act on his behalf and retain land to be held on trust for sale or other property to represent his share. (Sect. **28** (4).) Application can be made to the Court by any person interested if the trustees fail to exercise this power of partitioning. (Sect. **30.**)

The Partition Acts, 1868 and 1876, which gave the Court power to order a sale instead of partition, are repealed. (See *post*, p. 128.) As to partitioning chattels, see sect. 188 of L. P. A., *post*.

(7) Delegation of powers to life tenant.—Sect. 63 of S. L. A. 1882, and sects. 6 and 7 of S. L. A. 1884, which brought within the Acts land settled on trust for sale, are repealed by S. L. A. The power of the Court to authorize the tenant for life to exercise the S. L. A. powers in the case of settlements on trust for sale therefore disappears. The S. L. A. powers are, as already mentioned, given by sect. 28 to the trustees, but by sect. **29** they may delegate some of them. Sect. 29 provides that, until sale, trustees for sale may revocably delegate by writing their powers of leasing, accepting surrenders of leases and management to any person of full age (not being merely an annuitant) beneficially entitled in possession to the net rents during his life or for any less period. In favour of a lessee, such writing will be sufficient evidence, unless the contrary appears, that such delegation has been properly made and has not been revoked. (Sect. 29 (1).) The powers must be exercised in the names of the trustees, who, however, are freed from liability for the acts or defaults of the person to whom the power is delegated. (Sect. 29 (2) and (3).) If the trustees refuse to delegate, any person interested may apply to the Court. (Sect. **30.**)

UNDIVIDED SHARES AND JOINT OWNERSHIP. (Sects. 34 to 38.)

The vesting of land in numerous tenants in common or coparceners has in the past caused great difficulty in practice. This difficulty will be abolished after 1925. The L. P. A. and S. L. A. create a trust for sale where such tenancies exist when the Act comes into operation (see TRANSITIONAL PROVISIONS, *post*, p. 125), and prevent the creation of a legal tenancy in common in the future; such a tenancy will only be possible in equity, the land being vested in trustees for sale. Coparcenary also will generally be impossible

after 1925. (But see p. 38, *ante*.) On intestacy land will vest in the personal representatives on trust for sale. (A. E. A. s. 33, *post*.) Joint tenancy of a legal estate will still be possible, but where the joint tenants are beneficially entitled a trust for sale is created.

Undivided shares not allowed at law.—A legal estate cannot subsist or be created in an undivided share in land (sect. 1 (6)), and "land" in the Act does not include an undivided share in land unless the context so requires. (Sect. 205 (ix).)

How to be created.—The only method of creating undivided shares after 1925 will be by means of a trust for sale. (L. P. A. s. **34** (1); S. L. A. s. 36 (4).) If it is desired to make A. and B. tenants in common of land in fee simple absolute, the land will be conveyed to them on the statutory trusts (see below); if it is desired to make them tenants in common for life and for any other limited interest, the legal estate should be vested in the trustees of the settlement in the manner provided by S. L. A. (See sect. 36 of that Act, *post*.)

To guard against the possibility—or rather certainty—of attempts being made after the Act to create undivided shares in other ways, sect. **34** (2) provides that an attempted conveyance (this does not include a will) to persons of full age in undivided shares will operate as if the land had been conveyed to the grantees, if four or less, or if more than four then to the four first named, as joint tenants on "the statutory trusts." (See below.) If the conveyance is by way of mortgage the land will vest in them, or the first four of them, for a term of years absolute as joint tenants but without prejudice to their beneficial interests. (Sect. **34** (2).)

A gift or appointment by will to persons in undivided shares will operate as a devise or bequest or appointment to the trustees (if any) of the will for the purposes of S. L. A., or (if none) to the personal representatives, upon the statutory trusts, without prejudice to the powers of the personal representatives for purposes of administration. (Sect. **34** (3).)

Any disposition purporting to make a settlement of an undivided share in land will only operate as a settlement of a corresponding share of the net proceeds of sale and rents until sale. (Sect. 34 (4); and see S. L. A. s. 36, *post*.)

The statutory trusts are to sell the land and to stand possessed of the net proceeds of sale, after payment of costs, and of the net

rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land. (Sect. **35.**) The trustees have full power to postpone the sale (L. P. A. s. 25), and full S. L. A. powers and powers of management until sale. (L. P. A. s. 28.)

Joint tenants.—The foregoing provisions have no application to joint tenancies, for joint tenants do not hold in undivided shares. But sect. **36** contains provisions which will facilitate a sale of land held in joint tenancy. Where a legal estate (not being settled land) is beneficially limited to or held in trust for joint tenants it is to be held on trust for sale as if they were tenants in common, but not so as to sever their joint tenancy in equity. (Sect. 36 (1).) No severance of a joint tenancy of a *legal* estate, so as to create a tenancy in common in land, will be permissible, whether by operation of law or otherwise, but a joint tenant may still release his interest to the others, and a joint tenancy in an equitable interest may be severed, whether or not the legal estate is vested in the joint tenants.

Where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he must give to the others a written notice of such desire or do such other acts or things as would in the case of personal estate have been effectual to sever the tenancy in equity. (Sect. 36 (2).)

No severance of a mortgage term or trust estate, so as to create a tenancy in common, will be permissible. (Sect. 36 (3).)

Husband and wife are to be treated as two persons for all purposes of acquisition of any property under a disposition made or coming into operation after 1925. (Sect. **37.**) This does away with the curious law of *Re March*, 27 Ch. D. 166, and *Re Jupp*, 39 Ch. D. 148, under which a gift to husband and wife and a third person conferred half only on the husband and wife, unless a contrary intention appeared. Moreover, tenancies by entireties are converted into joint tenancies. (Part VI. of 1st Sched. of L. P. A., *post*, p. 129.)

Party structures.—Where under a disposition or other arrangement which, if a holding in undivided shares had been permissible, would have created a tenancy in common, a wall or other structure is, or is expressed to be made, a party wall or structure, that structure

will be and remain severed vertically as between the respective owners, and the owner of each part will have such rights to support and user over the rest of the structure, as may be requisite for conferring rights corresponding to those which would have subsisted if a valid tenancy in common had been created. In case of dispute any person interested may apply to the Court to declare the rights and interests under this provision. (Sect. **38**.) A similar provision is made by sect. 39 and the 1st Sched. to meet the case of a party wall or structure being held in undivided shares at the commencement of the Act. (See *post*, p. 129.)

Transitional Provisions.

In order to effect the transition from the law existing before the commencement of L. P. A. 1922 to the law enacted by that Act as amended by L. P. A. 1924, sect. **39** provides that the provisions of the **1st Sched.** are to have effect. The Schedule contains eight Parts.

Part I.—*Conversion of certain existing Legal Estates into Equitable Interests.*

All estates, interests and charges in or over land, including fees determinable whether by limitation or condition, which immediately before 1st January, 1926, are estates, &c. subsisting at law, or capable of taking effect as such, but which by virtue of Part I. of the Act (see sect. 1, *ante*) are not capable of taking effect as legal estates, will as from that date be converted into equitable interests, and will not fail, nor will the priority of any such estate, &c. over other equitable interests be affected.

Part II.—*Vesting of Legal Estates.*

As L. P. A. makes the legal estate the basis of conveyancing, this Part of the Schedule makes provision for vesting legal estates, outstanding at the end of 1925, in the person entitled to call for the same or for their extinction or merger. It operates once for all, and must be read as applying to the state of affairs existing immediately *after* the commencement of the Act, *i.e.*, the Act must be treated as in operation for the purposes of interpreting these provisions. See further on this Part of the Schedule, *ante*, p. 12.

1. Where the purposes of a term of years, created or limited out of leasehold land, are satisfied at the commencement of the Act, the

term is to merge in the reversion and cease; but where the term was vested in the owner of the reversion, this is not to prejudice any protection which would have been afforded had the term remained subsisting. Where the purposes are satisfied only as respects part of the land, this provision has effect as if a separate term had been created in regard to that part. (Cp. with sect. 5, *ante*.)

2. Where immediately after the commencement of this Act any owner of a legal estate is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any other legal estate in the same land to be surrendered, released or conveyed to him so as to merge or be extinguished, the last-mentioned estate is to be extinguished, but without prejudice to any protection which would have been afforded to him had that estate remained subsisting. This would apply, for instance, to a legal estate outstanding in a mortgagee who has been paid off.

3. Where any person is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any legal estate (not vested in trustees for sale) to be conveyed to or otherwise vested in him, such legal estate is to vest in manner hereinafter provided. This paragraph meets, for instance, the case of a legal estate outstanding in a bare trustee. It is expressly made to apply to legal estates in copyholds outstanding immediately before the commencement of the Act, special adaptation to that case being necessary, as copyholds are converted into freeholds by L. P. A. 1922, s. 128.

4. Any person entitled to an equitable interest capable of subsisting as a legal estate which has priority over any legal estate in the same land, is to be deemed to be entitled for the foregoing purposes to require a legal estate to be vested in him for an interest of a like nature not exceeding in extent or duration the equitable interest:

Provided that this paragraph is not to—

(a) apply where the equitable interest is capable of being overreached by virtue of a subsisting trust for sale or a settlement;

(b) operate to prevent such person from acquiring any other legal estate under this Part of this Schedule to which he may be entitled.

5. For the purposes of this Part of this Schedule a tenant for life, statutory owner or personal representative is to be deemed to be entitled to require to be vested in him any legal estate in settled land

(whether or not vested in the Crown) which he is, by S. L. A., given power to convey.

6. The legal estate affected is to vest as follows:—

(a) Where land is subject to a mortgage (not being an equitable charge unsecured by any estate), the legal estate is to vest in accordance with the provisions of the Act relating to mortgages, *i.e.*, the mortgagor will get the legal fee simple, or the term of years absolute, as the case may be, and the mortgagee will get a legal term of years absolute. (See L. P. A. ss. 85 and 86, *post*.)

(b) Where the land is subject to a trust for sale, the legal estate affected is to vest in the trustees for sale (including personal representatives holding land on trust for sale) but subject to any mortgage term subsisting or created by the Act.

(c) Where the land is settled land, the legal estate is to vest in the tenant for life or statutory owner entitled under S. L. A., to require a vesting deed to be executed in his favour or in the personal representative (if any) in whom the land may be vested or the Public Trustee, as the case may require, but subject to any mortgage term subsisting or created by the Act.

(d) In any case to which the foregoing sub-paragraphs (a), (b) and (c) do not apply the legal estate is to vest in the person of full age who, immediately after the commencement of this Act, is entitled to require the legal estate to be vested in him, but subject to any mortgage term subsisting or created by the Act.

7. Nothing in this Part of this Schedule will operate—

(a) To vest in a mortgagee of a term of years absolute any nominal leasehold reversion which is held in trust for him subject to redemption; or

(b) To vest in a mortgagee any legal estate except a term of years absolute; or

(c) To vest in a person entitled to a leasehold interest, as respects such interest, any legal estate except a term of years absolute; or

(d) To vest in a person entitled to a rent-charge (either perpetual or held for a term of years absolute) as respects such rent-charge any legal estate except a legal estate in the rent-charge; or

(e) To vest in a person entitled to an easement, right or privilege with reference thereto, any legal estate except a legal estate in the easement, right or privilege; or

(f) To vest any legal estate in a person for an undivided share (as to undivided shares, see Part IV., *infra*, p. 125); or

(g) To vest any legal estate in an infant (as to infants, see Part III., *infra*); or

(h) To affect prejudicially the priority of any subsisting mortgage or other incumbrance or interest; or

(i) To render invalid any limitation or trust which would have been capable of taking effect as an equitable limitation or trust; or

(j) To vest in a purchaser or his personal representatives any legal estate which he has contracted to acquire and in regard to which a contract (including an agreement to create a legal mortgage) is pending, although the consideration may have been paid or satisfied and the title accepted, or to render unnecessary the conveyance of such estate; or

(k) To vest in the managing trustees or committee of management of a charity any legal estate vested in the Official Trustee of Charity Lands; or

(l) To vest in any person any legal estate which failed to pass to him by reason of his omission to be registered as proprietor under L. T. A. 1875 and 1897, until brought into operation by virtue of L. R. A., *i.e.*, by some person being registered after 1925. (See L. R. A. s. 69 (3), *post*, p. 360.)

8. Any legal estate thus acquired is to be held upon the trusts and subject to the powers, provisions, rents, covenants, conditions, rights of redemption (as respects terms of years absolute) and other rights, burdens and obligations (if any) upon or subject to which the estate acquired ought to be held.

9. No stamp duty is payable by reason only of any vesting, surrender or release effected by the Act.

PART III.—*Provisions as to Legal Estate vested in Infant.*

As already mentioned, an infant cannot be the owner of a legal estate. (*Ante*, p. 98.) This Part of the 1st Schedule, therefore, makes provision for the destination of legal estates vested in infants

immediately before the commencement of the Act, and of legal estates which would have vested in infants immediately after the commencement of the Act by virtue of the Act had they been of full age. It must be read with paragraph 3 of the 2nd Sched. to S. L. A. As so read the effect is as follows:—

(1) Beneficial estates.—Where an infant is beneficially entitled in possession to a fee simple or term of years absolute, or would, if of full age, be a tenant for life or have the powers of a tenant for life, the land is to vest in the trustees (if any) of the settlement on trust. If none, it is to vest in the Public Trustee, but he cannot act or charge fees until requested in writing by the infant's parents or parent, or testamentary or other guardian (in the order named). When he has been so requested and has accepted, he will become the trustee of the settlement, and no trustee can be appointed in his place except with his consent or by order of Court, but until then other trustees may be appointed by any person able and willing to appoint, or, if none, by the parents, &c. (as above), and the legal estate divested into them. Failing such appointment, the Court may appoint on application by the infant's next friend. If the Public Trustee has not become the trustee and no other trustee has been appointed, the land will vest in the infant at majority. (S. L. A. 2nd Sched., para. 3.)

This paragraph extends to the legal estate in the settled land, except where such legal estate is vested in personal representatives at the commencement of the Act, in which case the paragraph is to have effect without prejudice to the provisions of para. 2 of 2nd Schedule of S. L. A., which expressly relate to settled land (an infant's land is treated as settled land) vested in personal representatives. (See *post*, p. 249.)

If at the commencement of the Act any persons have been appointed under sect. 60 of S. L. A. 1882, to act for an infant, they will be the trustees of the settlement. (S. L. A. 2nd Sched., para. 3.)

Although the Act vests the land in the trustees of the settlement, they must execute, at the cost of the trust estate, a principal vesting deed (see *post*, p. 225) declaring that it is so vested. (*Ibid.*)

The paragraph, though it applies where two or more infants are entitled, does not apply where an infant is jointly entitled with another person or other persons of full age. (*Ibid.*) In that case it is to vest in the other or others on the statutory trusts (see *ante*,

p. 118) if the joint estate is a fee simple in possession or a term of years absolute, but not so as to sever the beneficial joint tenancy. If this results in the legal estate becoming vested in one person, provision is made for the appointment of an additional trustee. (L. P. A. 1st Sched., Part III., para. 2.) If the joint tenants are tenants for life or other limited owners, apparently a vesting instrument vesting the legal estate in the person of full age will have to be executed in accordance with para. 1 of 2nd Sched. of S. L. A., *post*.

(2) Trust and mortgage estates.—Para. 3 of Part III. of the 1st Schedule of L. P. A. similarly provides for cases where a legal estate is vested solely in an infant as a personal representative, or a trustee of a settlement or on trust for sale or on any other trust, or by way of mortgage. The legal estate and mortgage debt (if any) and interest thereon are made to vest in the Public Trustee pending appointment of new trustees in the manner provided by the paragraph. (L. P. A. 1st Sched., Part III., para. 3.)

Where the infant is one of two or more personal representatives, trustees or mortgagees, the legal estate and the mortgage debt (if any) and interest are to vest in the other or others. If this results in there being a sole trustee, provision is made for the appointment of an additional new trustee. (*Ibid.* paras. 4 and 5.)

In neither of these two cases is a purchaser of the land or a transferee for money or money's worth of the mortgage concerned with the trusts. (*Ibid.*)

Part III. of 1st Sched. to L. P. A. does not affect the estate or powers of an administrator *durante minore ætate*, nor, where there is a tenant for life or statutory owner of settled land, operate to vest the legal estate therein in the Public Trustee. (*Ibid.* para. 5.)

Part IV.—*Provisions subjecting Land held in Undivided Shares to a Trust for Sale.*

As already mentioned, a tenancy in common or coparcenary will not be possible at law after 1925. This Part of the 1st Schedule, therefore, provides what is to happen to tenancies in common or in coparcenary existing immediately before the commencement of the Act. It deals first, by paragraph 1, with cases where land is held

at law or in equity in undivided shares vested in possession. The paragraph deals separately with four cases:—(1) Where the entirety of the land is vested in trustees or personal representatives. (2) Where the entirety, not being settled land, is vested absolutely and beneficially in not more than four persons of full age, and there is no incumbrance affecting any share. (3) Where the entirety is settled land. (4) Any other case.

(1) Entirety vested in trustees or personal representatives.—Here the land is to be held by the trustees or personal representatives, or if there is any incumbrance affecting an undivided share, or any incumbrance affecting the entirety not secured by a legal term of years absolute, the entirety of the land is to vest in them free from such incumbrance. The trustees or personal representatives are to hold the land on "the statutory trusts," *i.e.*, on trust to sell as provided by sect. 35, *ante*.

(2) Entirety, not being settled land, vested absolutely and beneficially in not more than four persons of full age.—The land vests in the former tenants in common or coparceners as joint tenants upon the statutory trusts. But this does not apply if any share is incumbered, though it does apply in spite of an incumbrance affecting the entirety.

(3) Entirety settled land held under one settlement.—The land vests in the trustees (if any) of the settlement as joint tenants upon the statutory trusts. Any incumbrance affecting only an undivided share, or not secured by a legal term of years absolute, is cleared off the land and shifted to the proceeds of sale. If there are no such trustees, the land vests in the Public Trustee on the statutory trusts until trustees are appointed, but he cannot act or charge any fee until requested in writing to act by persons interested in more than half the land. After such request and acceptance of it by the Public Trustee, no trustee can be appointed in his place except with his consent or by order of the Court. If, before the Public Trustee has accepted the trust, trustees of the settlement are appointed, the land will vest in them on the statutory trusts, and any person interested under the settlement may apply to the Court to appoint trustees if the proper persons fail to appoint or to apply for an appointment, or if the tenants for life of the undivided shares fail to agree.

(4) Any other case.—The land is to vest in the Public Trustee upon the statutory trusts, with a similar proviso as in case (3) about his not acting until request. This applies (*e.g.*)—

(a) where the land is vested absolutely and beneficially in more than four tenants in common or coparceners; or
(b) where any of the shares of such persons is incumbered; or
(c) where any such tenant is under age; or
(d) where the shares are separately settled or some are settled and others not.

Until the Public Trustee has accepted the trusts, persons interested in more than an undivided half may appoint new trustees in his place with the consent of any incumbrancer of an undivided share (but so that a purchaser shall not be concerned to see whether any such consent has been given); or they may, even after the Public Trustee has accepted the trust, apply to the Court for the appointment of new trustees, and, if they fail to do either of these things, any person interested can apply to the Court.

The vesting in the Public Trustee in cases (3) or (4) will not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as before.

Position of incumbrancers.—In all four cases the existence of incumbrances affecting the entirety of the land will not prevent it from vesting in the manner mentioned above, but the incumbrancers are not to be prejudiced, except where otherwise expressly provided. They will (if the nature of the incumbrance admits) take legal terms of years absolute in priority to the statutory trusts. "Incumbrance" in the section does not include land tax, tithe rent-charge, or any similar charge not created by an instrument. Where all the undivided shares are vested in the same mortgagee for securing the same mortgage money and the rights of redemption are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the mortgage is to be treated as an incumbrance affecting the entirety.

Where an incumbrance is divested by the section (*e.g.*, an incumbrance on an undivided share or an incumbrance of the entirety of settled land or land vested in trustees or personal representatives not secured by a legal term of years absolute) the incumbrancer's consent is required to the exercise of the trust for sale and powers of

management, except that where he is not in possession his consent is not necessary to a transaction which independently of Part I. of this Schedule would have been binding on him if effected by the mortgagor, *e.g.*, presumably the making of leases allowed by statute. A purchaser is not concerned to see or inquire whether such consent has been given.

When Part IV. of 1st Sched. does not apply.—Part IV. does not apply where a contract to sell the land is subsisting at the end of 1925 if the contract is completed in due course, nor where a partition action is pending if an order for partition or sale is subsequently made.

Partition Acts.—The Act having thus created, or provided for the creation of, a trust for sale in all cases of co-ownership, the Partition Acts, 1868 and 1876 (which allowed the Court to order a sale in lieu of partition) are rendered unnecessary, and are repealed without prejudice to proceedings thereunder commenced before the Act; but provision is made for such proceedings being stayed on application. (L. P. A. 1st Sched. Part IV. para. 1 (11).)

Undivided shares falling into possession after the Act.—Para. 2 of Part IV. of the 1st Schedule deals with any case where undivided shares in land, created before 1926, fall into possession after 1925, and the land is not settled land when the shares fall into possession. Here the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested are, by an assent or a conveyance, to give effect to the foregoing provisions of this Part of this Schedule just as if the shares had fallen into possession immediately before the commencement of the Act, and in the meantime the land is to be held on the statutory trusts. This meets the case, *e.g.*, of land settled on A. for life, with remainder to B. and C. as tenants in common in fee simple. Here on A.'s death the settlement comes to an end if no other interests exist under it except those of B. and C. A.'s personal representatives will hold on the statutory trusts, but, subject to their powers as personal representatives, they must vest the land in B. and C. (if of full age) as joint tenants on the statutory trusts.

Party structures and open spaces are dealt with specially by the next Part of the Schedule. (1st Sched. Part IV. para. 3.)

PART V.—*Provisions as to Party Structures and Open Spaces.*

(1) Party structures.—Where, immediately before the commencement of this Act, a party wall or other party structure is held in undivided shares, the ownership thereof is to be deemed to be severed vertically as between the respective owners, and the owner of each part will have such rights to support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Act. (Cp. sect. 38, *ante*.)

(2) Open spaces.—Where, immediately before the commencement of the Act, an open space (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof is to vest in the Public Trustee on the statutory trusts (see *ante*, p. 118), which can, however, be executed only with leave of Court. Meantime the owners have the same rights of access and user as before.

Any person interested can apply to the Court to declare the rights under this Part of the Schedule.

PART VI.—*Conversion of tenancies by entireties into Joint Tenancies.*

Every existing tenancy by entireties is converted into a joint tenancy, but without prejudice to any beneficial interest. This is of little practical importance, for tenancy by entireties is very rare, existing only when realty was given to husband and wife before the Married Women's Property Act, 1882, in such a way that, if they had not been husband and wife, they would have taken as joint tenants. (Cp. sect. 37, *ante*.)

PART VII.—*Conversion of existing Freehold Mortgages into Mortgages by demise.*

PART VIII.—*Conversion of existing Leasehold Mortgages into Mortgages by sub-demise.*

As will appear in sects. 85 and 86, *post*, very important alterations are made by the Act in the nature of a mortgage. Hitherto a legal mortgage has been created by the conveyance of the legal estate to the mortgagee, leaving the mortgagor in possession only of an equity of redemption. In order to confer upon the mortgagor the powers

of an estate owner, it was essential that the Act should make provision for the legal estate being in him. This is accomplished by sects. 85 and 86, under which legal mortgages of land are to take effect or be created only by demise or sub-demise, or by a charge by way of legal mortgage, though it is still possible to create equitable charges by deposit of documents, or otherwise. Thus the fee simple absolute in possession, or the term of years absolute, as the case may be, will remain in the mortgagor, and he will be an estate owner under sect. 1. (*Supra.*) The mortgagee, having a term of years absolute, will also have a legal estate and be an estate owner, for a legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done if the Act had not been passed. (Sect. 1 (5).)

Parts VII. and VIII. of the 1st Schedule make the necessary provisions for transmuting mortgages existing in the old form immediately before the commencement of the Act into mortgages by demise or sub-demise, as the case may be. They present little difficulty in comparison with the early provisions of the Act.

Existing freehold mortgages.—Land vested in a first or only mortgagee immediately before 1926 for a fee simple estate in possession, whether legal or equitable, is to vest in him for a term of 3,000 years from the 1st January, 1926, without impeachment of waste, subject to cesser on redemption. (1st Sched. Part VII. para. 1.) If vested then in a second or subsequent mortgagee for a fee simple estate in possession, whether legal or equitable, it is to vest in him for a similar term, but one day longer than that of the mortgagee immediately in front of him. (*Ibid.* para. 2.) Thus a second mortgagee will get a term for 3,000 years and one day, a third mortgagee a term for 3,000 years and two days, and so on. The fee simple, subject to the term or terms, is transferred by the Act to the mortgagor or tenant for life, statutory owner (see *post*, p. 283), trustee for sale, personal representative or other person of full age who, if all money owing on the mortgage and all other mortgages or charges had been discharged, would have been entitled to have the fee simple conveyed to him. (*Ibid.* para. 3.) If there is a sub-mortgage by conveyance of the fee simple, the principal mortgagee takes the term above referred to, and the sub-mortgagee a derivative term less by one day, without impeachment of waste, and subject to cesser on redemption. (*Ibid.* para. 4.) These provisions apply to copyholds enfranchised by L. P. A. 1922 as well as to land

which was freehold before the Act, and to land registered under L. R. A. except as mentioned in para. 6 below, as well as to unregistered land, and whether the mortgage is made by way of trust for sale or otherwise. (*Ibid.* para. 5.)

A mortgage affecting a legal estate made before 1926 which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge, will not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage, but will, in favour of such purchaser, be deemed to remain an equitable interest. This paragraph does not apply to mortgages or charges registered or protected under L. R. A. or to mortgages or charges registered in a local deeds register, *i.e.*, in Middlesex or Yorkshire. (*Ibid.* para. 6. As to registration of such mortgages, see sect. 10 of L. C. A., *post.*)

Nothing in this Part of this Schedule is to affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage. (*Ibid.* para. 7.)

This Part of this Schedule does not apply unless a right of redemption is subsisting immediately before 1926. (*Ibid.* para. 8.)

As to a legal estate outstanding, see paras. 6 (a) and 7 (a) and (b) of 1st Sched. Part II., *ante*, p. 122.

Existing leasehold mortgages.—Mortgages of leaseholds by way of assignment existing at the end of 1925 are similarly converted into mortgages by sub-demise. The first or only mortgagee gets a term equal to that assigned by the mortgage less the last ten days (1st Sched. Part VIII. para. 1); a second or subsequent mortgagee, whether legal or equitable, gets a term one day longer than that of the mortgagee immediately preceding him, if that is possible, but in any case less by one day than the term assigned. (*Ibid.* para. 2.) The term of years, which was assigned by the mortgage, is transferred by the Act to the mortgagor or tenant for life, &c., just in the same way as in the case of freeholders. (*Ibid.* para. 3.) If there is a sub-mortgage by assignment the principal mortgagee takes the principal derivative term created by this Part of this Schedule, and the sub-mortgagee a term less by one day. (*Ibid.* para. 4.) In all these cases the term vested in the mortgagee is subject to cesser on redemption. Para. 5 contains a provision similar to that of para. 6 of Part VII. of this Schedule protecting purchasers. (*Supra.*)

The above provisions apply, with the necessary variations, to mortgages of perpetually renewable leaseholds, and of leaseholds for lives which are converted into long terms by the L. P. A. 1922, and sect. 149 (6) of L. P. A. (*Ibid.* para. 6; see *ante*, p. 91.)

This Part of the Schedule applies, except as mentioned in para. 5 above, whether the land is registered under L. R. A. or not, or the mortgage is made by way of trust for sale or otherwise (para. 7), and its provisions are not to affect priorities or the right of any mortgagee to retain possession of documents, or his title to or rights over any fixtures or chattels personal comprised in the mortgage, but it only applies where a right of redemption subsists at the end of 1925 (para. 8).

PART II.

Contracts, Conveyances, and other Instruments. (Sects. 40 to 84.)

The practitioner who has struggled through the unfamiliar technicalities of Part I. will find little difficulty with Part II., which largely consists of provisions of well-known statutes, though considerable amendments have been made in some of them, and not a little new law inserted.

Contracts. (Sects. 40 to 50.)

Writing necessary.—Sect. **40** replaces that part of sect. 4 of the Statute of Frauds which relates to contracts for the sale of land. No action can be brought upon any contract for the sale or other disposition (see *post*, p. 193) of land, or any interest in land, unless the agreement or some note or memorandum of it is in writing signed by the party to be charged, or by some person thereunto by him lawfully authorised. This applies whenever the contract was made, and does not affect the law relating to part performance or sales by the Court. No alteration is made in the law, but the *express* exclusion of part performance and Court sales is new.

Stipulations not of the essence.—Sect. 25 (7) of the Judicature Act, 1873, is incorporated in sect. **41.** Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or have become of the essence of the contract, are also construed and have effect at law in accordance with the same rules. This makes no change in the law.

Evasion of the Act frustrated. —Sect. **42** endeavours to prevent purchasers (for money or money's worth) from being deprived of the benefit of the Act. This it does in the following ways:—

(1) It avoids the following stipulations:—

(a) That a purchaser of a legal estate shall accept a title made with the concurrence of any person entitled to an equitable interest, if a title can be made free from the equity without consent under a trust for sale or under this Act or S. L. A. or any other statute. (Sect. 42 (1).) As to the creation of a trust for sale or a settlement for the purpose of overriding an equitable interest, see *ante*, p. 20.

(b) That a purchaser of a legal estate shall pay or contribute towards the costs of getting a vesting order or appointing trustees, or the preparation, stamping, or execution of a conveyance on trust for sale, or of a vesting instrument for bringing the S. L. A. into force. (Sect. 42 (2).)

(c) That an outstanding legal estate shall be traced or got in by or at the expense of a purchaser, or that he shall not object to its remaining outstanding. This applies only to contracts for sale or exchange made after 1925. (Sect. 42 (3).)

(2) Sale of mortgage term. —A contract for the sale or exchange of a mortgage term is to be deemed to extend to the fee simple, if the vendor is able to convey the fee simple, or, in the case of a mortgage of a term of years absolute, to the leasehold reversion (sect. 42 (4) (i)); but this does not prevent a mortgagee of leasehold land from selling his mortgage term only if he cannot convey or vest the leasehold reversion expectant thereon. (Sect. 42 (5).)

(3) Sale of equitable interest. —A sale or exchange of an equitable interest capable of subsisting as a legal estate (*e.g.*, a fee simple absolute) is deemed to extend to the legal estate if the vendor can vest it, or require it to be vested in himself or the purchaser. (Sect. 42 (4) (ii).)

(4) Sale of entailed interest.—A sale or exchange of an entailed interest in possession is deemed to extend to the fee simple (or the

term of years absolute) if the vendor can vest it, or require it to be vested in himself or the purchaser. (Sect. 42 (4) (iii).)

(5) Sale of undivided share.—Such a contract, whenever made, will be sufficiently complied with by conveying a corresponding share in the proceeds of sale. (Sect. 42 (6).)

(6) Compulsory purchase.—If title can be made without payment of the compensation money into Court, title must be so made unless for any special reason the purchaser considers it expedient that the money shall be paid into Court. (Sect. 42 (7).)

As regards the whole of this section, it should be noted that a vendor cannot rescind the contract merely because the purchaser insists on his rights under the section. (Sect. 42 (8).)

Rights protected by registration.—Where a purchaser of a legal estate is entitled to acquire the same discharged from an equitable interest which is protected by registration as a pending action, annuity, writ, order, deed of arrangement or land charge, and which will not be over-reached by the conveyance to him, he may, notwithstanding any stipulation to the contrary, require (a) that the registration shall be cancelled; or (b) that the person entitled to the equitable interest shall concur in the conveyance; and in either case free of expense to the purchaser. If neither can be done, the section does not affect any right to rescind the contract. (Sect. **43.**)

The section appears to make no substantial change in the law. A purchaser who discovers an equitable interest, to which the sale is not made subject, can even now insist on the vendor clearing it off, or in default refuse to complete. As to what registered charges can be over-reached, see note to sect. 2 of L. P. A., *ante*.

Commencement of title.—Sect. **44** is mostly familiar law. It takes the place of the provisions of sects. 1 and 2 (1) of V. & P. A., sects. 3 (1) and (2) and 13 of C. A. 1881, and sect. 4 (1) of C. A. 1882, with regard to the commencement of title in the general case, and in particular under a contract to grant or assign a lease, or to sell enfranchised copyholds. It applies only so far as a contrary intention is not expressed in the contract (sect. 44 (11)), but it applies, except where otherwise mentioned, to contracts whether made before or after 1st January, 1926, and applies to exchanges as well as sales, but only if the contract for exchange is made after 1925. (Sect. 44 (10).) The following new points require notice:—

(1) Length of title.—Thirty years is substituted for forty years

as the period of commencement of title, whether the contract was made before or after the commencement of the Act. But earlier title than thirty years may be required where earlier title than forty years may now be required (sect. 44 (1)), *i.e.*, in the case of advowsons (see sect. 201, *post*), tithes or other property held under a Crown grant, leaseholds and reversionary interests.

(2) Patman v. Harland, 17 Ch. D. 353, reversed.—A lessee or assignee of a lease, who takes his lease or assignment under an open contract made after 1925, and is therefore prevented from calling for the title to the freehold or to a leasehold reversion, is not to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice. (Sect. 44 (5).)

(3) Prior title.—To remove doubts, sect. 44 (8) declares that a purchaser is not, and never has been, affected by notice of any matter or thing of which, if he had investigated the title or made inquiries in regard to matters prior to the period of commencement of title fixed by this Act, or any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries. But this does not appear to affect *Re Cox and Neve's Contract*, (1891) 2 Ch. 109, which decided that a purchaser, who agrees to take a title shorter than he could call for under an open contract, is deemed to have notice of equities appearing on the title during the statutory period. The period of commencement of title in such a case is fixed by the contract of the parties, not by statute or any rule of law.

(4) Manorial incidents extinguished.—Where the manorial incidents formerly affecting any land have been extinguished (see *ante*, p. 76), a purchaser of the freehold cannot call for the title of the person entering into any compensation agreement, or giving a receipt for the compensation money, and is not to be deemed to be affected with notice of anything of which he might have had notice had he contracted that such title should be furnished. (Sect. 44 (7).) This is on the same lines as sect. 44 (6), replacing sect. 3 (2) of C. A. 1881, as to a sale of enfranchised copyholds.

Other statutory conditions of sale. Sect. **45** incorporates, with a few amendments, sect. 2 (2) to (5) of V. & P. A., and sect. 3 (3)

to (7) and (11) of C. A. 1881. It applies to contracts for sale whenever made, and to contracts for exchange made after 1925, but is subject to any stipulation or contrary intention expressed in the contract. (Sect. 45 (10).)

Nothing in the section is to be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of the section, and containing stipulations similar to the provisions of the section, or any of them, specific performance of the contract would not be enforced against him by the Court. (Sect. 45 (11).)

The section deals, in addition to the matters mentioned below, with the evidence of performance of covenants on a sale of a lease or underlease (sect. 45 (2) and (3)), abstract on a sale in lots (*ib.* (5)), recitals in instruments twenty years old (*ib.* (6)), inability to furnish acknowledgment of right to production (*ib.* (7)), and cost of such acknowledgment and undertaking. (*Ib.* (8).) The following alterations in the law require attention:—

(1) Prior title.—Sect. 3 (3) of C. A. 1881, which prohibits a purchaser, in the absence of stipulation, from requiring the production of documents anterior to the commencement of the title, is reproduced by sect. 45 (1), but with the proviso that the sub-section is not to deprive a purchaser of the right to require the production or any abstract or copy of (i) any power of attorney under which any abstracted document is executed; or (ii) any document creating or disposing of an interest, power or obligation, which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or (iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

(2) Costs.—Sect. 45 (4) modifies slightly the stringency of sect. 3 (6) of C. A. 1881, which it replaces. The sub-section throws on a purchaser, in the absence of stipulation, the expense of production of documents and evidence not in the vendor's possession, but after 1925, documents and evidence in the possession of the vendor's mortgagee or trustee are to be regarded for this purpose as in the vendor's possession, so that the expense of production will not fall on the purchaser. This overrules *Re Willett and Argenti* (1889), 60 L. T. 735.

(3) Title deeds -vendor's right to retain. -A new rule is substituted by sect. 45 (9) for the 5th rule in sect. 2 of V. & P. A. 1874. The rule is now as follows:—"A vendor shall be entitled to retain documents of title where (a) he retains any part of the land to which the documents relate, or (b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust." This is a great improvement on the former rule, which only allowed retention of the documents where the vendor retained "any part of an estate." This was held in *Re Williams and Duchess of Newcastle's Contract*, (1897) 2 Ch. 144, to apply only to land, with the result that, apparently, a purchaser from trustees who were selling all the land comprised in a settlement could, in the absence of a condition to the contrary, insist on the settlement and any appointment of new trustees being handed over. (See "Law Notes," Vol. 38, p. 187.) This often led to trouble in practice. Clearly, after 1925, the case will be covered by the rule, but the actual decision in *Re Williams and Duchess of Newcastle's Contract* appears not to be affected, for the instrument there was a mortgage. The mortgage comprised land and policies of insurance, and the mortgagee sold all the land but retained the policies. It was held that the purchaser was entitled to have the mortgage deed handed over.

Contracts by correspondence. -By sect. **46** the Lord Chancellor is given power from time to time to prescribe forms of contracts and conditions of sale of land, which, unless a contrary intention is expressed, will apply to contracts by correspondence. They may be made to apply to other cases by express reference. It is to be hoped that this section will remain a dead letter. It is bad enough for the layman to be expected to know statutes; to expect him to be conversant with rules published from time to time appears most undesirable in view of the difficulty of ascertaining what rules have been published.

Insurance money on a sale.—Sect. **47** is apparently intended to reverse the law of *Rayner* v. *Preston*, 18 Ch. D. 1, where it was held that if a house is burnt down between contract and completion the purchaser is not, apart from stipulation, entitled to the benefit of an insurance policy effected by the vendor. Under this section, "where after the date of any contract for sale or exchange of pro-

perty, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor."

But the section applies only to contracts made after 1925, and has effect subject to any stipulation to the contrary contained in the contract, *and to any requisite consents of the insurers*, and to the payment by the purchaser of the proportionate part of the premium from the date of the contract. The section applies, with the necessary modifications, to a sale or exchange by order of the Court.

What the effect is of the words which we have italicised is far from clear. If the house is burnt down between contract and completion and the insurance company has not consented to the vendor holding on trust for the purchaser, what is the position? If the purchaser does not get the benefit of the section, it leaves the law as it is at present. If he does, the position of the vendor appears to be an unpleasant one. He would, apparently, have to hand the insurance money to the purchaser, and after completion, perhaps, have to return to the company an equivalent amount out of the purchase money. The cautious practitioner will put a stipulation in the contract or conditions of sale excluding the section.

Purchaser may employ his own solicitor.—After 1925 any stipulation on the sale of land that the conveyance (including a lease when a sale is effected by demise or sub-demise) or the registration of title shall be prepared or carried out at the purchaser's expense by the vendor's solicitor, and any stipulation which might restrict the purchaser in selecting his solicitor, will be void. But this will not affect the vendor's right to furnish a form of conveyance from which the draft may be prepared or to charge a reasonable fee therefor, or, where a perpetual rent-charge is to be reserved as the only consideration in money or money's worth, to stipulate that the draft conveyance is to be prepared by the vendor's solicitor at the purchaser's expense. (Sect. **48** (1).)

Further, sect. 48 (2) makes void any stipulation in a lease or underlease that assignments or other conveyances of the lessee's or

underlessee's interest shall be prepared by the lessor or his solicitor at the purchaser's expense. This sub-section applies even where the lease or underlease was made before the commencement of the Act. In lieu of any stipulation made void by this sub-section, the sub-section substitutes a stipulation for registration of assignments and devolutions at a fee of one guinea.

Registration must be effected within six months, and breach of the implied stipulation will enable the lessor to enforce the condition of re-entry (if any) contained in the lease.

The section does not affect the law relating to the preparation of a lease or underlease or the draft thereof, except where a sale is effected by demise or sub-demise. (Sect. 48 (3).)

Vendor and purchaser summons.—Sect. **49** (1) re-enacts sect. 9 of V. & P. A. so far as it applies to England. The only new point is that it is expressly stated to apply to a contract for the sale *or exchange* of any interest in land.

Return of deposit.—Sect. 49 (2) provides that where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the Court may, if it thinks fit, order the repayment of any deposit. This applies to exchanges as well as sales. (Sect. 49 (3).) Although this provision is contained in the section relating to vendor and purchaser summonses, it is not limited to them. The Court has often ordered return of a deposit on such a summons. The point of the provision is apparently that it does away with the harsh law of such cases as *Re National Provincial Bank of England and Marsh*, (1895) 1 Ch. 190; and *Re Scott and Alvarez*, (1895) 2 Ch. 603, in which, though the Court owing to the vendor's inequitable conduct has refused specific performance, the purchaser has not been able to recover his deposit, the vendor having carried out his contract at law.

Discharge of incumbrances on sale or exchange.—Sect. 5 of C. A. 1881, as amended by sect. 1 of C. A. 1911, is replaced with amendments by sect. **50.** The Court's power to declare land free from an incumbrance is to extend to exchanges as well as sales made at any time, and to incumbrances whether created by statute or otherwise, and to other land affected by the incumbrance besides the land sold or exchanged. At present, if part only of the land is sold, though sufficient is paid into Court to meet the whole incumbrance, the order only declares the part sold to be free; so that

another application has to be made on a subsequent sale of a further part. This absurd technicality is removed.

CONVEYANCES AND OTHER INSTRUMENTS. (Sects. 51 to 75.)

Lands lie in grant only. -Sect. 2 of R. P. A. 1845, and sect. 49 of C. A. 1881, are replaced by the following provision:—

(1) All lands and all interests therein lie in grant and are incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.

(2) The use of the word "grant" is not necessary to convey land or to create any interest therein. (Sect. **51.**)

This effects little real alteration in the law. The old methods of conveying are rarely resorted to in practice, except that a feoffment is used to convey gavelkind land vested in an infant. As infants will not be able to hold a legal estate after 1925, the loss of the power to convey by feoffment is immaterial. As to the non-necessity of actual entry in the case of the grant of a lease, see sect. 149, *post*.

Deed necessary.—Sect. 3 of R. P. A. 1845 reappears in a modern form in sect. **52**. All conveyances of land or of any interest therein are void for the purpose of conveying or creating a *legal* estate unless made by deed, with the following exceptions:—

(a) Assents by a personal representative;

(b) Disclaimers made in accordance with sect. 54 of the Bankruptcy Act, 1914, or not required to be evidenced by writing [as a rule disclaimers may be made by word of mouth or by conduct, but disclaimer of a power must be made by deed (C. A. 1882, s. 6, replaced by sect. 156 of L. P. A.), and a married woman's disclaimer of land must sometimes be by deed (R. P. A. 1845, s. 7, replaced by sect. 168 of L. P. A.)];

(c) Surrenders by operation of law, including surrenders which may, by law, be effected without writing;

(d) Leases or tenancies or other assurances not required by law to be made in writing;

(e) Receipts not required by law to be under seal;

(f) Vesting orders of the Court or other competent authority;
(g) Conveyances taking effect by operation of law.
As to when writing is necessary, see sect. 53, *infra*.

Writing.—Sects. **53** to **55** take the place of sects. 1, 2, 3, 7, 8 and 9 of the Statute of Frauds. They appear merely to put the repealed sections in a modern form without any substantial alteration.

53.—(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—

(a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;

(b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;

(c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.

54.—(1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(2) Nothing in the foregoing provisions of this Part of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

55. Nothing in the last two foregoing sections shall—

(a) invalidate dispositions by will; or

(b) affect any interest validly created before the commencement of this Act; or

(c) affect the right to acquire an interest in land by virtue of taking possession; or

(d) affect the operation of the law relating to part performance.

Persons taking who are not parties and indentures.—Sect. 5 of R. P. A. 1845 is re-enacted by sect. **56**. A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although not named as a party to the conveyance or other instrument. This is wider than the old section which was confined to tenements and hereditaments.

A deed between parties, to effect its object, has the effect of an indenture though not indented or expressed to be an indenture.

Description of deeds.—A deed, says sect. **57**, may be described, at the commencement thereof or otherwise, as a deed simply, or as a conveyance, mortgage, lease, &c., according to the nature of the transaction. The various forms contained in the 3rd, 4th and 5th Schedules do not start in the old fashion "This Indenture," but "This Conveyance," "This Legal Charge," "This Transfer of Mortgage," "This Further Charge." This is a small but sensible improvement. "Indenture" has been a misnomer since 1845. (See previous section.)

Supplemental instruments.—Sect. 53 of C. A. 1881 is replaced, in a slightly altered form, by sect. **58**. Any instrument, whenever executed, expressed to be supplemental to a previous instrument is, as far as may be, to be read and have effect as if it contained a full recital of the previous instrument, but this section does not operate to give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument. Little alteration is effected. The words from "but" onwards are new, and the alternative course allowed by the old section of expressing the deed to be "an annex" to a previous deed disappears.

Conditions and certain covenants not implied.—An exchange or other conveyance by deed after 1st October, 1845, does not imply any condition in law, nor does the word "give" or "grant" imply any covenant in law except where otherwise provided by statute. (Sect. **59**.) This is an old friend—sect. 4 of R. P. A. 1845. The word "grant" implies certain covenants for title in conveyances by promoters of the undertaking under sect. 132 of the Lands Clauses Consolidation Act, 1845, and in conveyances to the Governors of Queen Anne's Bounty.

Sect. **60** abolishes technicalities in regard to conveyances and deeds.

Words of limitation.—After 1925, the word "heirs" or the words "in fee simple" need not be used in a conveyance of freehold land to pass a fee simple estate. The fee simple or other the whole interest of the grantor will pass without words of limitation, unless a contrary intention appears in the conveyance. (Sect. 60 (1).) Deeds are, in short, placed in this respect on the same footing as wills.

Similarly after 1925, in conveying to a corporation sole by his corporate designation, the word "successors" need not be used. (Sect. 60 (2).)

Sect. 51 of C. A. 1881, with regard to words of limitation in deeds executed after 1881, is re-enacted by sect. 60 (4).

Resulting trust.—In a voluntary conveyance made after 1925, a resulting trust for the grantor will not be implied merely because the property is not conveyed expressly for the use or benefit of the grantee. (Sect. 60 (3).)

Resulting *uses*, of course, disappear with the Statute of Uses (*ante*, p. 99). The object of this section is to prevent practitioners from thinking that the words "to the use" must still be used in a voluntary conveyance to prevent a resulting trust from arising.

Construction of deeds, &c.—In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after 1925, unless the context otherwise requires, (a) "month" means calendar month; (b) "person" includes a corporation; (c) the singular includes the plural and *vice versâ*; (d) the masculine includes the feminine and *vice versâ*. (Sect. **61.**)

The provision as to month should be noticed. At the present time month sometimes in instruments, *primâ facie*, means a lunar month, *e.g.*, in a lease. (*Phipps & Co.* v. *Rogers*, (1924) 2 K. B. 45; 43 "Law Notes," p. 254.)

General words implied.—Sect. **62** repeats sect. 6 of C. A. 1881 as to general words being implied in conveyances in the absence of a contrary intention, with one alteration, viz., that the right to compensation for manorial incidents on the extinguishment thereof (see *ante*, p. 76) is deemed to be a right appertaining to a manor,

and will therefore pass on a conveyance of the manor, unless excepted.

All the estate clause implied.—Curiously enough, sect. **63** of L. P. A. replaces the section of the same number in C. A. 1881. "All the estate" clause need not be inserted in a conveyance.

Production and safe custody of documents.—The provisions of sect. 9 of C. A. 1881 are re-enacted without alteration by sect. **64.**

Reservation of legal estates.—Sect. **65** is new. It provides that a reservation (made after 1925) of a legal estate is to operate at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made, or any regrant by him, so as to create the legal estate reserved, and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made; and that a conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance, is to operate as a reservation, unless a contrary intention appears.

This section is necessary owing to the repeal of the Statute of Uses and sect. 62 of C. A. 1881. Under the present law it is possible for a grantor to reserve a rent or any other right over the land, either to himself or some other person, by means of a use, without any execution of the deed by the grantee. Thus, A. may convey to B. to the use that A. shall have a right of way over the land, and, subject thereto, to the use of B. If this were done without recourse to the Statute of Uses, A.'s easement would be equitable only unless B. executed the deed. After 1925 the reservation will create a legal right although the grantee does not execute the deed. (See Form No. 6 in 5th Sched., *post*.)

Confirmation of past transactions.—Sect. **66** enables an estate owner to confirm a legal estate, which by reason of some technical defect may be invalid, and the subsequent dealings with it. This object is effected by a deed declaring that the estate shall go and devolve in the requisite manner. (See Form No. 7 in 5th Sched., *post*.) If the owner is not absolute owner, leave of the Court will be necessary. The section applies to leasehold as well as freehold land. The provision is rendered necessary by the repeal of the

Statute of Uses, for the confirmation hitherto has been effected by a conveyance to uses.

Receipt in deed.—Sects. 54 to 56 of C. A. 1881, with regard to receipts embodied in or indorsed on a deed, and the authority of a solicitor to collect money by producing a deed containing such a receipt, are repeated without alteration by sects. **67, 68** and **69.** As to a trustee's solicitor, see sect. 23 of T. A., *post*.

Release of part of land from rent-charge.—Sect. **70** incorporates sect. 10 of L. P. A. A. 1859, to the effect that a release from a rent-charge of part of the land charged does not extinguish the whole rent, but only the right to recover any part of the rent out of the land released, without prejudice to the rights of persons interested in the land remaining unreleased and not concurring in or confirming the release, *i.e.*, only a proportionate part of the rent can be recovered from the unreleased part. (*Borth* v. *Smith*, 14 Q. B. D. 318.) There is nothing new in the section.

Release of part of land from a judgment.—Sect. **71** contains a provision, similar to the previous section, as to the effect of release of part of land from a judgment. This merely re-enacts sect. 11 of L. P. A. A. 1859.

Conveyances by a person to himself, &c.—Sect. 21 of L. P. A. A. 1859, and sect. 50 of C. A. 1881, are repeated with extensions by sect. **72.** The former section enabled a person after 12th August, 1859, to convey personal property, including chattels real, to himself jointly with another, and the latter authorised such a conveyance after 1881 of freehold land or a thing in action, and also a conveyance of freehold land or a thing in action by husband to wife, and *vice versâ*. But neither section enabled a person to convey to himself alone. Such a transaction, in the case of freeholds, is at present effected by a conveyance to a grantee to uses. After 1925, the Statute of Uses being repealed, it will be done by a direct conveyance. (Sect. 72 (3).)

The same section deals with the case of a conveyance by A. and B. to B. Questions sometimes arise in practice as to the validity of such a conveyance. Sect. 73 (4) declares that two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to

a third party. But the transaction may still be set aside if it is a breach of trust.

As to covenants by a person with himself and another, see sect. 82, *post*.

Deed must be signed.—It has always been a moot question whether, theoretically, a deed requires signature. Sect. **73** settles the question as regards any deed executed by an individual after 1925. He must either sign or place his mark against the deed, and sealing alone will not be deemed sufficient.

Execution of instruments by corporations.—In favour of a purchaser, a deed will be deemed duly executed by a corporation aggregate if its seal is affixed in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body, and if it appears on its face to have been so executed it will be deemed to have been duly executed. (Sect. **74** (1).)

Instruments not under seal may be executed by an agent appointed generally or specially by the board of directors, council or other governing body of the corporation. (Sect. 74 (2).)

Where a person is authorised under a power of attorney or under any statutory or other power to convey any property on behalf of a corporation sole or aggregate, he may as attorney sign the corporation's name in the presence of at least one witness, and in the case of a deed affix his own seal. (Sect. 74 (3).)

Where a corporation aggregate is similarly authorised to convey on behalf of any person (including another corporation), an officer appointed for that purpose by the board of directors, &c. may execute the deed or other instrument in the name of such person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser, the instrument is to be deemed to have been executed by an officer duly appointed. (Sect. 74 (4).)

The foregoing provisions apply to transactions wherever effected, but only to deeds and instruments executed after 1925, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment made before or after or by the Act. (Sect. 74 (5).)

The above methods of execution are in addition to, not in substitution for, any other legal mode of execution. (Sect. 74 (6).) They apply to any interest in property, not only to land.

Rights of purchaser as to execution.—Sect. **75** replaces sect. 8 of C. A. 1881 without alteration. A purchaser cannot insist on the vendor executing the conveyance in his presence or in that of his solicitor, as such; but he may at his own cost appoint someone (who may be his solicitor) to attest the execution.

COVENANTS. (Sects. 76 to 84.)

Covenants for title, implied.—Sect. **76**, as read with **2nd Schedule,** where the covenants are set out *in extenso,* re-enacts sect. 7 of C. A. 1881, which enabled practitioners to dispense with many of the usual covenants for title in conveyances by using the phrases mentioned in the section. The only alterations are in the nature of extensions.

(1) Mortgage is made to include a charge.

(2) In a conveyance by way of mortgage of freehold property subject to a rent, the words "as beneficial owner" will imply the same covenant as they imply in case of a mortgage of leaseholds, viz., that the rent has been paid and covenants performed up to completion, and that the mortgagor will continue to pay the rent, &c. during the continuance of the security.

(3) Where a person is expressed to convey "as receiver of a defective," the same covenant will be implied as where a person conveys as trustee, &c., viz., the usual limited covenant that he has done nothing to incumber.

(4) The covenant just mentioned may be implied, after 1925, in an assent given by a personal representative though it is not made by deed. This is also provided for by sect. 36 of A. E. A., *post*.

Sect. **77**, as read with **2nd Schedule,** where the covenants are set out in full, carries the policy of sect. 7 of C. A. 1881 yet further as regards conveyances made after 1925 by implying the covenants which are usually set out expressly in a conveyance of land which is subject to a rent. (As to powers, or cross powers, of entry and distress being implied, see L. P. A. s. 190.) It deals with the following cases:—

(1) Conveyance for value, not being a mortgage, of any land affected by a rent-charge.—Here, if the entirety of the land is conveyed, or if part only is conveyed and the rent-charge has been apportioned with the consent of the owner of the rent-charge, a

covenant is implied by the grantee to pay the rent or the apportioned part and to perform the covenants contained in the document creating the rent-charge and on the part of the owner of the land or of the part conveyed to be performed, and to indemnify the conveying party. If part only is conveyed subject to an apportioned part of the rent-charge, but the apportionment has been made without the consent of the owner of the rent-charge, a covenant similar to the above is implied on the part of the grantee limited to the part conveyed, and, if the person conveying conveys or is expressed to convey as beneficial owner, there is implied a similar covenant on his part with regard to any part of the land, affected by the rent-charge, which he retains. (Sect. 77 (1) (A) and (B).)

(2) Assignment for value, not being a mortgage, of a lease.—Here, if the entirety of the land is conveyed, or if part only is conveyed and the rent has been apportioned with the lessor's consent, a covenant is implied by the assignee to pay the rent or the apportioned part, and to perform the covenants in the lease or to perform them so far as they relate to the part of the land conveyed, and to indemnify the assignor. If part only is conveyed subject to an apportioned part of the rent, but the apportionment has been made without the lessor's consent, the assignee's covenant is limited to the part assigned, and, if the assignor retains part of the land and conveys or is expressed to convey as beneficial owner, there is implied on his part a similar covenant relating to the rent and covenants in respect of the part retained. (Sect. 77 (1) (C) and (D).)

Provision is made by sub-sect. (2) to adapt the implied covenants to cases where part of land affected by a rent-charge or part of land comprised in a lease is, without the consent of the owner of the rent-charge or of the lessor, conveyed subject to or charged with the entire rent, or discharged or exonerated from the entire rent.

Any covenant which would be implied under this section by reason of a person conveying or being expressed to convey as beneficial owner may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or as receiver of a defective, or under an order of the Court. (Sect. 77 (4).)

The section only applies to conveyances made after 1925 (sect. 77 (8)), and "conveyance" does not include a demise by way of lease at a rent. (*Ib.* (3).) A covenant implied by virtue of the section may be varied or extended by deed (*ib.* (6) and (7)), and the benefit of it will go with the estate of the implied covenantee. (*Ib.* (5).)

Benefit of covenants relating to land.—Sect. **78** puts sect. 58 of C. A. 1881 into proper form to fit in with the provisions of the new Acts by providing that a covenant relating to any land of the covenantee is to be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and is to have effect as if such successors and other persons were expressed.

For this purpose in connexion with covenants restrictive of the user of land "successors in title" includes the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

This section only applies to covenants made after 1925, but the repeal of sect. 58 of C. A. 1881 is not to affect the operation of covenants to which that section applied.

Burden of covenants relating to land.—A new provision on this point is to be found in sect. **79.** A covenant, made after 1925, relating to any land of a covenantor or capable of being bound by him will, unless a contrary intention is expressed, be deemed to be made by him on behalf of himself, his successors in title, and the persons deriving title under him or them, and will have effect as if such successors and other persons were expressed. This provision extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made. After 1925, therefore, it will not be necessary, as it is apparently at present under the law of *Spencer's Case*, 5 Co. 16, for a lessee to covenant for his assigns in order to bind an assignee to do something new on the land demised, *e.g.*, to build a wall. Presumably the section does not affect the law of such cases as *Austerberry* v. *Corporation of Oldham*, 29 Ch. D. 750, to the effect that the burden of a covenant involving the expenditure of money does not run with the land except as between landlord and tenant. But this might have been made clearer. The burden of restrictive covenants, of course, runs with the land in equity under

the rule in *Tulk* v. *Moxhay*, 2 Ph. 774, and sect. 79 (3) provides expressly that for the purposes of this section in connexion with covenants restrictive of the user of land, "successors in title" shall be deemed to include the owners and occupiers for the time being of such land.

Covenants binding land.—Sect. **80** puts sect. 59 of C. A. 1881 into an up-to-date form by providing that (1) a covenant, bond and an obligation or contract under seal made after 1881, or implied by this Act, binds the covenantor's real estate as well as his personal estate if a contrary intention is not expressed; (2) every covenant running with the land, whether entered into before or after the Act, is to take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of the covenant will vest in or bind the persons who succeed to the title of the covenantee or the covenantor, as the case may be; (3) the benefit of a covenant relating to land entered into after 1925 may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Act; (4) for the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

The section seems to make no change in the law, but merely to meet the new provisions as to the devolution of land on death.

Joint covenantees.—Sect. **81**, replacing sect. 60 of C. A. 1881, extends that section by providing that a covenant, contract under seal, bond or obligation under seal, with two or more jointly, made or entered into after 1925, or implied by the Act, shall, in the absence of a contrary intention shown, be construed as being made with each of them, as well as with the survivor or survivors as at present.

Covenant with self and others.—A covenant, express or implied, or agreement entered into by a person with himself and another is to be construed and enforceable as if entered into with the other. This includes covenants for title implied on a conveyance by one person to himself and another. It applies to covenants or agreements entered into before as well as after the Act. It is unrestricted in its operation and not confined to covenants relating to land. (Sect. **82.**) Hitherto such covenants have been void. (*Ellis* v.

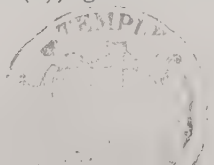
Kerr, (1910) 1 Ch. 529; *Napier* v. *Williams*, (1911) 1 Ch. 361.) Cp. sect. 68 of S. L. A., *post*, as to leases of settled land to the tenant for life.

Construction of implied covenants.—In the construction of a covenant, proviso or other provision implied by the Act in a deed or assent, words importing the singular or plural number, or the masculine gender, are to be read as also importing the plural or singular or as extending to females. (Sect. **83**.) There was a similar provision in sect. 64 of C. A. 1881.

Discharge or modification of restrictive covenants.—A new method of obtaining a total or partial discharge or modification of restrictions affecting the user of land or the building thereon is provided by sect. **84**. Any person interested in the land may apply for this purpose to "the Authority" mentioned in the section, *i.e.*, such one or more of the Official Arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, as may be selected by the Reference Committee under that Act. Before making an order the Authority must be satisfied (a) that by reason of changes in the character of the property or the neighbourhood, or other material circumstances, the restriction ought to be deemed obsolete, or that its continued existence, or continued existence without modification, would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons; or (b) that the persons of full age and capacity entitled to the benefit of the restriction have agreed, expressly or by implication by their acts or omissions, to the same being discharged or modified, or that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction. The order may be made with or without compensation. It is subject to an appeal to the Court in accordance with rules of Court. Rules may be made by the Reference Committee in relation to applications and fees.

The section applies to restrictions whether subsisting at the commencement of the Act or imposed thereafter, but not where the restriction was imposed on a disposition made gratuitously or for a nominal consideration for public purposes. It applies mainly to freehold land, but leaseholds created for more than seventy years (not being mining leases) are within the section if fifty years of the term have expired.

The same section (sect. 84 (2)) gives the Court power in any



proceedings (a) to declare whether any land is affected by a restriction, or (b) to declare what is its nature and extent, and whether it is enforceable, and, if so, by whom. The Court may also, in proceedings to enforce a restrictive covenant, stay the proceedings and give leave to make an application to the Authority under this section. (Sect. 84 (9).)

The power conferred on the Authority by this section will not prejudice any concurrent jurisdiction of the Court, *e.g.*, the somewhat similar power conferred on the Court by sect. 27 of the Housing, Town Planning, &c. Act, 1919.

PART III.

Mortgages, Rent-charges and Powers of Attorney. (Sects. 85 to 129.)

Mortgages. (Sects. 85 to 120.)

Mode of mortgaging freeholds.—This is to be found in sect. **85.** After 1925 a legal mortgage of a fee simple can only be effected (a) by a demise for a term of years absolute, without impeachment of waste, subject to a provision for cesser on redemption, or (b) by a charge by deed expressed to be by way of legal mortgage. (See sect. 87 below.) But a first mortgagee has the same right to possession of documents as if his security included the fee simple. A purported conveyance of a fee simple by way of mortgage made after 1925 will operate as a demise for 3,000 years, or if it is a second or subsequent mortgage, for a term one day longer than that created by the mortgage immediately preceding it, subject in either case to cesser on redemption.

The section applies to registered as well as to unregistered land and to mortgages made by way of trust for sale as well as in any other way. Any power to lend money on mortgage of an estate in fee simple is to be construed as a power to mortgage in the way provided by the section.

As regards mortgages existing at the commencement of the Act, see *ante*, p. 130.

Mode of mortgaging leaseholds.—This is laid down by sect. **86.** After 1925 a legal mortgage of a term of years absolute can only be effected either (1) by a sub-demise for a term of years absolute, less by one day at least than the mortgagor's term, and subject to a proviso for cesser on redemption, or (2) by a charge by deed expressed to be by way of legal mortgage. (See sect. 87 below.) But a first

mortgagee has the same right to possession of documents as if his security had been effected by assignment. A purported assignment of a term of years absolute by way of mortgage made after 1925 will (to the extent of the mortgagor's estate) operate as a sub-demise, the first mortgagee taking a term 10 days less than that expressed to be assigned, and the second a term one day longer than the first mortgagee's, and so on. Like the preceding section, this section applies to registered land and to a mortgage by way of trust for sale.

As regards mortgages existing at the commencement of the Act, see *ante*, p. 131.

Charge by way of legal mortgage.—Sect. **87** explains the effect of a charge by deed expressed to be by way of legal mortgage. The mortgagee is to have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if (a) where the mortgage is a mortgage of an estate in fee simple, a mortgage term for 3,000 years without impeachment of waste had been thereby created in his favour; and (b) where the mortgage is a mortgage of a term of years absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in his favour. (Sect. 87 (1).)

A mortgagee whose mortgage has by the Act been converted into a term of years absolute or sub-term (see *ante*, p. 130) may, by a written declaration, convert the mortgage into a charge by way of legal mortgage, and in that case the mortgage term will be extinguished in the inheritance or in the head term, as the case may be, but the mortgagee will be in the same position as if the mortgage term or sub-term had remained subsisting. The power of conversion may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative. Such declaration will not affect the priority of the mortgagee or his right to retain possession of documents, nor affect his title to or right over any fixtures or chattels personal comprised in the mortgage. (Sect. 87 (2) and (3).)

A form of charge by way of legal mortgage will be found in 5th Sched. Form No. 1.

Realisation of freehold mortgages.—Where an estate in fee simple has been mortgaged by the creation of a term of years absolute or by a charge by way of legal mortgage, and the mortgagee sells under his power of sale, whether his mortgage was created before or after the Act, his conveyance made after the Act will vest the fee

simple in the purchaser, subject to any prior legal mortgage. The conveyance will extinguish the mortgage term and subsequent mortgage terms and charges. The conveyance may, as respects the fee simple, be made in the name of the estate owner. (Sect. **88** (1).)

Similarly, if such a mortgagee forecloses, the order for foreclosure absolute will vest the fee simple in him, subject to any prior legal mortgage. Subsequent mortgage terms and charges will be extinguished. (Sect. 88 (2).)

If he obtains a title by adverse possession he, or the persons deriving title under him, may enlarge the term into a fee simple under the statutory power (see L. P. A. s. 153, *post*), or, if he is a chargee, declare that the fee simple is vested in him. (Sect. 88 (3).)

Where the mortgage includes fixtures or chattels personal, any statutory power of sale and any right to foreclose or take possession will extend to the absolute or other interest therein affected by the charge. (Sect. 88 (4).)

These provisions are adapted to sub-mortgages by sect. 88 (5).

There is a general provision in sect. 88 (6) preventing the mortgagee from getting or giving a better title than he could have done if the Act had not been passed.

Realisation of leasehold mortgages.—Sect. **89** contains similar provisions with regard to leasehold mortgages or charges by way of legal mortgage, so as to enable the mortgagee (or chargee), though he only has a sub-term, to sell or acquire the whole term. If he sells after the Act his conveyance will operate to convey not only the mortgage term, but also (unless expressly excepted with the leave of the Court) the leasehold reversion, subject, of course, to any legal mortgage having priority to his mortgage. The mortgage term and any subsequent mortgage term or charge will be extinguished unless excepted as aforesaid. The conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested. Where a licence to assign is required on a sale by a mortgagee, it is not to be unreasonably refused. (Sect. 89 (1).)

Again, on foreclosure absolute, the leasehold reversion and any subsequent mortgage term will, unless the order otherwise provides, vest in the mortgagee, and the mortgage term and any subsequent mortgage term or legal charge bound by the order will be extinguished unless the order otherwise provides. (Sect. 89 (2).)

So, too, on the mortgagee acquiring a title under the Limitation Acts, he or the persons deriving title under him may by deed declare that the leasehold reversion and any mortgage term affected by the title so acquired shall vest in him. (Sect. 89 (3).)

Where the mortgage includes fixtures or chattels personal, any statutory power of sale and any right to foreclose or take possession will extend to the absolute or other interest therein affected by the charge. (Sect. 89 (4).)

These provisions are adapted to sub-mortgages by sect. 89 (5).

The section is not to prejudice any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage. It applies to mortgages executed either before or after the Act, or created by the Act. But it does not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion, unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value, or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected. (Sect. 89 (6).)

Realisation of equitable charges by the Court.—If the Court makes an order for sale in relation to an equitable mortgage on land, the Court may, in favour of a purchaser, make a vesting order conveying the land, or may appoint a person to convey the land or create and vest in the mortgagee a legal term of years absolute to enable him to carry out the sale, as the case may require, but without prejudice to any prior incumbrance. (Sect. **90.**)

Sale by direction of Court.—Sect. **91** re-enacts, with additions, sect. 25 of C. A. 1881, which authorises the Court in an action for foreclosure, redemption, &c., to direct a sale of the mortgaged property on the request of any person interested. "Mortgaged property" includes, says the new provision, the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable; this is inserted because of the new form of mortgage. Further, for the purposes of the section the Court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrance, as the Court may think fit; or, in case of an equitable mortgage, may create and vest a mortgage term in

the mortgagee to enable him to carry out the sale as if the mortgage had been made by deed by way of legal mortgage.

Power to authorise land and minerals to be dealt with separately.—Sect. **92** is of little importance. It continues the Court's power, conferred by sect. 44 of T. A. 1893, and sect. 3 of T. A. 1894, to authorise a mortgagee to sell surface and minerals apart. But he can do this without the leave of the Court if his mortgage was created after 1911 by virtue of sect. 4 of C. A. 1911, now replaced by sect. 101 (2), *infra*.

Consolidation of mortgages.—Sect. **93** repeats sect. 17 of C. A. 1881. The Act does not affect the right to consolidate. The position is as before, *i.e.*, a mortgagee may consolidate if (1) all the mortgages were made before 1882—which is unlikely; or (2) if the right to consolidate is reserved by one of the mortgage deeds.

Tacking is dealt with by sect. **94.** It will be impossible after the Act comes into operation for a third mortgagee to get priority over a second mortgagee by taking a transfer of the first mortgage, for under the Act the second mortgagee has a legal term of years, or a legal charge which has the same effect. Moreover, sect. 94 (3) expressly abolishes the right to tack except as regards further advances made by a prior mortgagee which will rank in priority to subsequent mortgages, whether legal or equitable, if an arrangement to that effect has been made with the subsequent mortgagees, or if the prior mortgagee had no notice of the subsequent mortgages at the time of the advance, and in these two cases tacking will be allowed whether or not the prior mortgage was made expressly for securing further advances. And there is one case in which the prior mortgagee will be able to tack even though he had notice of a subsequent mortgage, and that is where the mortgage imposes an obligation on him to make further advances. This reverses the law of *West* v. *Williams*, (1899) 1 Ch. 132. And if the mortgage is made expressly for securing a current account or other further advances, the mortgagee will not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the date of the original advance or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened. This provision is rendered necessary by the fact that registration in the

Land Registry or in Middlesex or Yorkshire is made to constitute actual notice. (Sects. 197 and 198, *post*.)

These provisions as to tacking apply to mortgages whenever made, but not to charges registered under L. R. A., nor do they affect priority acquired before the Act by tacking or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

There is also another provision of the Act which should be noticed in this connection, viz., that of sect. 97 to the effect that mortgages not secured by deposit of title deeds rank in the order of their registration as land charges. (See *infra*.)

Transfer instead of reconveyance.—Sect. **95** reproduces, without amendment, sect. 15 of C. A. 1881, as amended by sect. 12 of C. A. 1882, conferring on a mortgagor a right to demand a transfer instead of a reconveyance, notwithstanding any stipulation to the contrary, unless the mortgagee is or has been in possession.

Saving of right to take possession.—The Act does not prejudice the right of a mortgagee of land to take possession, whether or not his charge is secured by a legal term of years absolute, but his taking of possession does not convert any legal estate of the mortgagor into an equitable interest. (Sect. **95** (4).)

Title deeds.—Sect. **96** replaces, with an addition, sect. 16 of C. A. 1881, which gives a mortgagor a right to inspect and make copies of the documents of title in the mortgagee's custody. The new provision is to the effect that a mortgagee, whose mortgage is surrendered or otherwise extinguished, is not to be liable for delivering the documents to the person not having the best right thereto unless he has notice of the right or claim of the person having the best right. (Sect. 96 (1) and (2).)

Priorities.—Sect. **97** also contains a provision of great importance to the effect that every mortgage affecting a legal estate in land made after 1925, whether legal or equitable (not being a mortgage protected by deposit of documents relating to the legal estate affected), is to rank according to its date of registration as a land charge. This provision does not apply to mortgages or charges of registered land or of land within the jurisdiction of a local deeds registry. It is a provision which should be carefully noted. Every second or subsequent mortgage after 1925 should be registered. (Cp. sect. 10 of L. C. A., *post*.)

Actions for possession, &c. by mortgagors.—Sect. 25 (5) of the Judicature Act, 1873, which allows a mortgagor in possession or in receipt of the rents to bring actions, is repeated by sect. **98** without alteration, except that the section now expressly provides that it is not to prejudice a mortgagor's power, independently of the section, to take proceedings in his own name, either in right of any legal estate vested in him or otherwise.

Leasing powers.—The length of leases which may be made by a mortgagor or mortgagee in possession, or by a mortgagee who has appointed a receiver, is largely increased in the case of mortgages made after 1925, by sect. **99**, which replaces sect. 18 of C. A. 1881, and parts of sect. 3 of C. A. 1911. The maximum term, in the case of mortgages made after 1925, for agricultural or occupation leases is raised from 21 to 50 years, and for building leases from 99 to 999. By agreement in writing, whether in the mortgage deed or not, further or other powers relating to leasing may be given to either or both parties, but those powers are not prejudicially to affect the rights of any other mortgagee existing at the date of the agreement unless he agrees. A mortgagee may delegate his powers of leasing to a receiver appointed by him under the statutory power.

Surrenders of leases.—Sect. **100** re-enacts sect. 3 of C. A. 1911 with regard to surrenders of leases. The only alterations are (1) that by written agreement between mortgagor and mortgagee further or other powers relating to surrenders of leases may be conferred, whether the agreement is in the mortgage deed or not, but such powers will not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement unless he joins in or adopts the agreement; and (2) that a mortgagee may by writing delegate his powers of accepting surrenders to a receiver appointed under the statutory power.

Powers of mortgagee.—Sect. 19 of C. A. 1881, as extended by C. A. 1911, s. 4, is re-enacted by sect. **101**. It confers on mortgagees by deed made after 1881—or as regards some of the powers, *e.g.*, to sell surface and minerals apart, after 1911—powers of selling, insuring, appointing a receiver, and, when in possession, cutting timber. No alteration in the law is made by the section, except the very minor alteration that, if the mortgaged property consists of an interest in income, or of a rent-charge or an annual or

other periodical sum, a receiver may be appointed of that property or any part thereof. (Cp. sect. 102, *infra*.)

Mortgagee of undivided share.—It will be recalled that where a tenancy in common or coparcenary exists at the end of 1925, the Act creates a trust for sale, and that any mortgage previously created by one of the tenants in common or coparceners of his interest is shifted from the land to the proceeds of sale or income until sale. (See *ante*, p. 127.) Sect. **102** meets this case by giving the mortgagee the same power to sell his share in the proceeds and income as he formerly had in regard to the share in the land, and also a power to compel the trustees to account for the income and the same power to appoint a receiver of it as he formerly had in regard to the land.

Regulation of exercise of power of sale.—Sect. **103** replaces, without any alteration, sect. 20 of C. A. 1881, which specifies the events in which a mortgagee may exercise his statutory power of sale.

Conveyance on sale.—Sect. **104** re-enacts sect. 21 (1) and (2) of C. A. 1881, as extended by sect. 5 (1) of C. A. 1911, with regard to the power of a mortgagee to convey in exercise of his power of sale and the protection of a purchaser on such a sale. The only alterations are that the section enacts that a conveyance on sale by a mortgagee after 1925 is to be deemed made in exercise of the statutory power unless a contrary intention appears; and that a purchaser's title is not to be impeachable (if the mortgage is made after 1925) on the ground that leave of the Court when so required was not obtained. This is not of much importance, for the Court's leave is not as a rule required. For a case where leave is necessary, see sect. 110, *infra*. For a form of conveyance, see Form No. 4 in 5th Sched., *post*.

Application of proceeds of sale is dealt with by sect. **105**, which makes no change in sect. 21 (3) of C. A. 1881.

Provisions as to exercise of power of sale.—There is nothing new about sect. **106**; it was all previously contained in sect. 21 (4) to (7) of C. A. 1881, and sect. 5 (2) of C. A. 1911—that the power of sale may be exercised by the person for the time being entitled to receive the mortgage money, that the power of sale does not affect foreclosure, that the mortgagee is not answerable for involuntary loss, and that he may recover the title deeds from any person, not having priority to his mortgage, at any time after the power of sale has become exercisable.

Mortgagee's receipts.—Nor does sect. **107** alter the law. It is merely a repetition of sect. 22 of C. A. 1881, protecting persons paying money to a mortgagee.

Insurance.—Slight alterations are made by sect. **108** in sect. 23 (3) and (4) of the C. A. 1881, so as to confine the mortgagee's right under that section to have insurance money applied in making good the loss or discharging the mortgage to cases where the mortgagor is liable to keep up the insurance. But this does not appear to affect the mortgagee's right under sect. 83 of the Fires (Prevention) Metropolis Act, 1774, to require the insurance company to rebuild. (See *Sinnott* v. *Bowden*, (1912) 2 Ch. 414.) Otherwise the new section is the same as the old.

Receivers.—Sect. 24 of C. A. 1881 is replaced by sect. **109** with the following amendments:—

(1) Hitherto a receiver, after paying the mortgagee's interest, has had to hand over any surplus to the mortgagor or next mortgagee. By the new section he must, if so directed in writing by the mortgagee, apply the surplus in or towards discharge of the principal money.

(2) A receiver appointed under the statutory power must, when so directed by a mortgagee, insure to the extent (if any) to which the mortgagee might have insured.

As already mentioned, a mortgagee may delegate to the receiver his own powers of leasing and accepting surrenders of leases. (Sects. 99 and 100.)

Bankruptcy of mortgagor, effect on power to sell, &c.—Sect. **110** is new, but of minor importance. It provides that where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt, such power shall not be exercised only on account of the act of bankruptcy or adjudication, without the leave of the Court.

The section applies only where the mortgage deed is executed after 1925. "Act of bankruptcy" has the same meaning in the section as in the Bankruptcy Act, 1914.

As already mentioned (*ante*, sect. 104), a purchaser is not concerned to see that an order of the Court has been obtained.

Joint account.—Sect. 61 of C. A. 1881 is replaced without alteration by sect. **111**. (Cp. sect. 113, *infra*.)

Notice of trusts on transfer of mortgage.—Sect. 13 of C. A. 1911—preventing a 10*s*. stamp on a transfer of a mortgage from giving notice of a trust—is replaced unaltered by sect. **112**. Wider provisions as regards trusts of mortgage money are contained in the next section.

Trusts affecting mortgage debts.—Sect. **113** is new and important. It carries out the general idea of the Act to keep trusts off the title.

A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been wholly or partially discharged, released or postponed, is not concerned with any trust affecting the mortgage money, whether he has notice or not, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage (a) that the mortgagees, if more than one, are or were entitled to the mortgage money on a joint account; and (b) that the mortgagee has or had power to give valid receipts and to release or postpone the priority of the mortgage debt or to deal with the same or the mortgaged property.

He need not investigate the equitable title to the mortgage debt or the appointment or discharge of trustees. This applies to mortgages whenever made, but only as respects dealings effected after 1925.

It does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

Transfers of mortgages.—It was decided in *Re Beachey, Heaton v. Beachey*, (1904) 1 Ch. 67, that a deed purporting to transfer "the benefit of" a mortgage, which was not a statutory mortgage, did not pass the legal estate. But, by sect. **114**, a deed executed by a mortgagee after 1925 purporting to transfer his mortgage or the benefit thereof, whenever the mortgage may have been made, will operate, unless a contrary intention is therein expressed, to transfer to the transferee, his executors, administrators, and assigns, (1) the right to recover the money and interest, and (2) the benefit of all securities for the same, and (3) the benefit of all covenants and powers, and (4) all the mortgagee's estate and interest in the mort-

gaged property. The section does not apply to a transfer of a bill of sale.

A form of transfer is given in the 3rd Schedule—Form No. 1.

Reconveyances by endorsed receipt.—After 1925, by sect. **115**, a receipt endorsed on, written at the foot of, or annexed to, a mortgage will be sufficient to vacate the mortgage without any reconveyance, surrender or release, provided the receipt states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt. If the mortgage is by demise or sub-demise, the receipt will usually operate as a surrender so as to merge the mortgage term in the immediate reversion; in other cases, it will operate as a reconveyance to the person entitled to the equity of redemption immediately before execution of the receipt. But where, by the receipt, the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the effect of the receipt will be to transfer the mortgage to him, except (a) where it is otherwise expressly provided, or (b) where the mortgage is paid off out of capital money or other money in the hands of a personal representative or trustee applicable for the discharge of the mortgage, and the receipt does not expressly provide that it shall act as a transfer, or (c) where the money is paid by the mortgagor and there is an intervening incumbrancer, for the mortgagor himself cannot keep the mortgage alive so as to affect prejudicially a subsequent incumbrancer. (Cp. sect. 116, *infra*, and see second note in Specimen No. 5 of Epitomes of Abstracts of Title in 6th Schedule.)

A form of receipt is given in the 3rd Schedule, Form No. 2. A covenant that the mortgagee has not incumbered is implied. It must be stamped as a reconveyance.

If the mortgage consists of a mortgage and a further charge, or of more than one deed, it will be sufficient for the receipt to refer to all the deeds or to the aggregate amount of the mortgage money and to be endorsed on one of the deeds.

The section applies whether the mortgage was created before or after the Act, and to a charge by way of legal mortgage, but not to a charge or incumbrance registered under the L. R. A.

The provisions of the section relating to the operation of a receipt apply to the discharge of a mortgage given to a building, friendly,

industrial or provident society, in substitution for the existing statutory provisions, but not so as to render stamp duty payable.

Cesser of mortgage terms.—After the money secured by a mortgage has been discharged, the term will become a satisfied term and will cease, subject to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require the mortgage to be kept alive by transfer or otherwise. (Sect. **116**; cp. sect. 115, *supra*.)

Forms of statutory legal charges, &c.—Sects. **117**, **118**, **119** and **120**, repeating sects. 26 to 29 of C. A. 1881, with the necessary modifications to adopt them to the new system of mortgages, allow mortgages to be made by deed expressed to be made by way of statutory mortgage, and, when so made, to be transferred by a transfer expressed to be made by way of statutory transfer and to be discharged by a special receipt, and, provided the Forms set out in the 4th Schedule are used, the instruments will have the effect laid down in the sections. The idea is, of course, to encourage brevity, but it is doubtful whether more advantage will be taken of these specially short statutory forms than has hitherto been taken of those contained in C. A. 1881. Many practitioners think that they leave too much to the imagination.

Rent-charges. (Sects. 121 and 122.)

Remedies for recovery.—The remedies to recover a rent-charge, which are given by sect. 44 of C. A. 1881, are repeated in sect. **121**, which incorporates also sect. 6 of C. A. 1911, declaring that the perpetuity rule does not apply to these remedies. There is one alteration necessitated by the fact that, by virtue of sect. 1, *ante*, the only *legal* rent-charge which will be possible after 1925 will be a rent-charge in possession which is either perpetual or for a term of years absolute, and that other rent-charges (*e.g.*, for life) will be equitable only. It is accordingly provided by the section—121 (4)—that the power to create a legal term of years absolute for the purpose of recovering arrears is only to be exercised after 1925 when the rent-charge is held for a legal estate. And see sect. 8 (2), *ante*.

Rent-charge on a rent-charge.—Sect. **122** is new. It allows a rent-charge or other annual sum (not being rent incident to a reversion) to be granted out of another rent-charge or annual sum

(not being rent incident to a reversion) charged on land. The section operates to confirm any such grant made before the Act.

If the annual sum so created is unpaid for twenty-one days after it is due, the person entitled may appoint a receiver just as if he were a mortgagee appointing a receiver under sect. 109, *ante*. This power to appoint a receiver is to take effect in substitution for the remedies given by sect. 121, *ante*. The power to appoint a receiver is declared not to be obnoxious to the perpetuity rule.

Powers of Attorney. (Sects. 123 to 129.)

Execution under power of attorney.—Sect. **123** merely repeats sect. 46 of C. A. 1881, allowing the donee of a power of attorney, if he thinks fit, to execute instruments in his own name and under his own seal by authority of the donor. But this is to operate without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner.

Revocation.—Sect. **124** replaces sect. 47 of the C. A. 1881, protecting a person making or doing any payment or act in good faith in pursuance of a power of attorney which, unknown to him, has been revoked expressly or impliedly. The new section adds the further provision that a statutory declaration by an attorney (or, where the donee of the power is a corporation, by the officer appointed) that he has received no notice or information of the revocation is to be conclusive proof of non-revocation, provided the declaration is made immediately before or within three months after the payment or act. It also puts a person to whom probate or letters of administration have been granted as attorney for some other person in the same position as if he were acting directly under a power of attorney given by that other person.

Powers of attorney must be filed.—A power of attorney, executed after 1925, relating to unregistered land must be filed at the Central Office pursuant to the statutory enactment in that behalf (*i.e.*, sect. 48 of C. A. 1881, which is not repealed) unless it relates only to one transaction and is to be handed over on completion. If it relates to registered land, it must be filed at the Land Registry. If to both registered and unregistered land, it must be filed at the Central Office and an office copy at the Land Registry. (Sect. **125** (1).) No right to rescind a contract will arise because a purchaser insists on this section being complied with. (Sect. 125 (3).)

Purchaser's right to power of attorney.—Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being registered land or charge) is entitled to have any instrument, executed after 1925, creating a power of attorney affecting his title, or an office copy, delivered to him free of expense. (Sect. 125 (2).) No right to rescind the contract will arise by reason of the enforcement of the provisions of this section. (*Ib.* (3).)

Irrevocable powers.—Sects. **126** and **127** merely re-enact sects. 8 and 9 of C. A. 1882, protecting purchasers from the consequences of revocation of a power of attorney which is expressed to be irrevocable.

Devolution of power given to a purchaser.—A power of attorney given for value may be given, and is to be deemed to have been always capable of being given, to a purchaser and to the persons deriving title under him, and those persons will be the duly constituted attorneys for all purposes of the power, but without prejudice to any right to appoint substitutes given by the power. (Sect. **128** (1).) But this only applies to powers given after 1882 (sect. 128 (2)), and it does not authorise derivative owners to execute, on behalf of the registered proprietor, an instrument relating to registered land to which effect is to be given on the register unless the power is protected by a caution or other entry on the register. (Sect. 128 (3).)

Power granted by married woman.—Sect. **129** re-enacts sect. 40 of C. A. 1881—that a married woman, whether an infant or not, may appoint an attorney to do anything which she herself could do.

PART IV.

Equitable Interests and Things in Action. (Sects. 130 to 138.)

Entails.—Important alterations are made by sect. **130** with regard to estates tail. As has appeared from sect. 1, *ante*, an estate tail will not be possible as a legal interest after 1925, and any legal estate tail existing at the end of 1925 will, at the first moment of 1926, be converted into an equitable interest as provided by sect. 39 and Part I. of the 1st Schedule, *ante*, p. 120. In the unlikely event of the estate tail being an estate in possession—it usually follows after a life interest—a vesting deed will have to be executed in accordance with the 2nd Schedule of S. L. A., *post*,

p. 248, and the legal fee simple vested usually in the former tenant in tail, the equitable interest still remaining limited in tail.

After 1925 an estate tail—which is renamed by the Act an "entailed interest"—will only be capable of being created by a settlement, including the will of a person dying after 1925, or by an agreement for a settlement in which the trusts to affect the property are sufficiently declared. (Sect. 130 (6).)

Personalty may be entailed.—An entailed interest—which means an interest in tail or in tail male or in tail female or in tail special—may, after 1925, be created by way of trust in *any* property, real or personal. (Sect. 130 (1).) This is an innovation. Hitherto, only "tenements" have been entailable under the *De Donis* statute. A gift of personalty—including leaseholds—to A. and the heirs of his body has given A. the absolute interest. (*Leventhorpe* v. *Ashbie*, Tudor's Leading Conveyancing Cases.) The object of the change in the law is, no doubt, to simplify strict settlements where leaseholds or other personalty are settled to go along with the freeholds. After 1925 it will be possible to direct simply that the personalty shall be enjoyed or held with or on the trusts affecting land in which an entailed interest has been created, and this will be effective to create a corresponding entailed interest in the personal estate, including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms. (Sect. 130 (3); cp. sect. 67 of S. L. A., *post*.)

Entailed personal estate (not being chattels settled as heirlooms) may be invested and dealt with as if it were capital money under S. L. A. (Sect. 130 (1); cp. S. L. A. s. 77, *post*.)

Words of limitation necessary.—The technical words of limitation—*i.e.*, heirs of the body or "in tail"—must be used, whether the entailed interest is created by deed or by will, except that an entailed interest in personal estate will be created if it is directed to be held with entailed land. (Sect. 130 (3).) If other expressions are used—*e.g.*, "issue" or "children"—an equitable fee simple in the case of realty, or an absolute interest in the case of personalty, will be created. (Sect. 130 (1) and (2).)

The rule in *Shelley's Case* (see *post*, sect. 131) being abolished, a limitation to A. for life and then to the heirs of A.'s body will not give A. an estate tail.

Barring of entail.—The power to bar an entail is not affected (sect. 130 (1)), but the necessity for enrolment of the disentailing assurance is abolished. (Sect. 133.)

Devolution of entailed interest.—If an entailed interest is not barred or disposed of by will (as it may be by sect. 176, *post*), it will devolve in equity on the person who would have taken as heir of the body, or as tenant by the curtesy, if the Act had not been passed. (Sect. 130 (4).) It will not pass to the personal representatives of the deceased tenant in tail (A. E. A. s. 3 (3), *post*), nor does the fact that it might have been disposed of by his will render it liable for his debts. (Sect. 176 (2), *post*.)

Sale of entailed chattels.—Where personal chattels are settled without reference to settled land on trusts creating entailed interests, the trustees, with the consent of the usufructuary of full age, may sell. (Sect. 130 (5).)

Shelley's case.—The rule in this case is abolished as regards instruments coming into operation after 1925. (Sect. **131.**) Where there is a limitation to A. for life, then to his heir or heirs or issue or any particular heir or any class of his heirs or issue, the words "heir," &c. will operate in equity as words of purchase, not of limitation. The heir to take will be ascertained according to the old law. Presumably, if the limitation is to the "heirs of the body" or "issue," the heir will take an entailed interest.

Heir as purchaser.—Where, by an instrument coming into operation after 1925, real or personal property is limited to the heir, general or special, of a deceased person (whenever he died) as a purchaser, the heir to take must be ascertained according to the old law. (Sect. **132,** and see A. E. A. s. 51 (1), *post*.) He will take an equitable interest only. (See also sect. 131, above.)

Enrolment of disentailing assurance abolished.—After 1925 there will be no need to enrol a disentailing assurance, or the protector's consent, or a deed for enlarging a base fee, under the Fines and Recoveries Act, 1833, whatever the property entailed may be, and whenever the entail may have been created. (Sect. **133.**) Otherwise, the provisions of the Act of 1833 with regard to the barring of entails are unaffected.

Restrictions on executory limitations.—Sect. **134** replaces sect. 10 of C. A. 1882, but with a slight alteration. The section,

it will be remembered, makes a gift over of land on failure of issue void on any issue attaining twenty-one years of age. The original section applies only "where there is a person entitled to land for an estate in fee or for a term of years absolute or determinable on life or for term of life," and it will still only apply to such a person even after 1925 in the case of instruments coming into operation before 1926. But, as regards instruments operating after 1925, the new section makes the provision applicable "where there is a person entitled to (a) an equitable interest in land for an estate in fee simple or for any less interest not being an entailed interest, or (b) any interest in other property, not being an entailed interest." Thus the provision is extended to personalty, and if personalty is given to A., and on his dying without issue to B., A. will be absolutely entitled immediately any of his issue attains twenty-one, and the gift over to B. will be void.

Equitable waste.—Sect. 25 (3) of the Judicature Act, 1873, is repeated without alteration by sect. **135.** A tenant for life without impeachment of waste has no right to commit equitable waste unless the instrument expresses an intention to give him such right.

Assignments of things in action.—Sect. **136** re-enacts sect. 25 (6) of the Judicature Act, 1873, with regard to legal assignments of things in action. No change is effected.

Priorities of equitable interests.—The law as to priority between claimants having equitable interests in land is revolutionised by sect. **137.** Shortly, the effect is to extend the rule in *Dearle* v. *Hall*, 3 Russ. 1, to equitable interests in land, capital money, and securities representing capital money, whether the money or securities are in Court or not. Where there are, after 1925, successive dealings with such interests, and "dealing" includes a disposition by operation of law (sect. 137 (10)), priority of right will depend on priority of notice. (Sect. 137 (1).)

The persons on whom notice must be served (if the money or securities are not in Court) are (i) in the case of settled land, capital money or securities representing capital money, the trustees of the settlement, and, if the equitable interest is created by a derivative or subsidiary settlement, then the trustees of that settlement: (ii) in the case of land settled on trust for sale, the trustees for sale; (iii) in any other case, the estate owner of the land affected. (Sect. 137 (2).)

The notice to preserve priority must be in writing, whether the property is real or personal. (*Ib.* (3).) At present the notice under the *Dearle* v. *Hall* rule may be oral. Where a notice has been served on a trustee, the trustees for the time being are entitled to the custody of it, and any person interested in the equitable interest may, subject to payment of costs, require production. (*Ib.* (8).) The liability of the estate owner of the legal interest affected to produce documents and furnish information to persons entitled to equitable interests therein is to correspond to the liability of a trustee for sale. (*Ib.* (9).)

If a valid notice cannot be served, or cannot be served without unreasonable cost or delay, *e.g.*, because there are no trustees, or the trustees are not persons to whom a valid notice can be given, a purchaser may at his own cost require a memorandum to be indorsed on the instrument creating the trust, and to have the instrument produced to prove that this has been done. Priority here will depend on the time of the indorsement. (*Ib.* (4).)

If there is no trust instrument, *e.g.*, if the trust is created by statute or by operation of law, the instrument under which the equitable interest is acquired, or which is evidence of the devolution thereof, is to be deemed the instrument creating the trust. Thus, where the trust arises from an intestacy, the letters of administration or probate will be the instrument. (*Ib.* (6).) These provisions as to indorsement apply whether the property is realty or personalty.

Priority acquired before 1926 is not affected by the section. (*Ib.* (7).) The section does not apply until a trust has been created. (*Ib.* (10).)

Power to nominate trust corporation to receive notices.—Another section dealing with notice is sect. **138,** but it is much less important. It authorises the nomination by the trust instrument, or, in default, by the trustees or by the Court on the request of a person interested, of a trust corporation, to whom notices of dealings affecting real or personal property may be given. Where a corporation has been so nominated, the name of the corporation is to be indorsed on the trust instrument, and priority will depend on the time of notice to the corporation. If notice is given to the trustees, they must at once deliver it, or send it by post, to the trust corporation. The corporation is to keep a register of notices containing

certain particulars, which is to be open to inspection by persons who would have had a right to inspect notices served on the trustees, and the corporation must reply to inquiries respecting notices in the same circumstances as the trustees would have had to reply. Fees, not exceeding those prescribed, may be charged for entries, inspections, and replies to inquiries.

This section is optional and not compulsory, and while the appointment of a trust corporation to receive notices would no doubt facilitate dealings by beneficiaries with their interests, and save the trustees trouble and possible risk of liability, the section will probably not be taken much advantage of in practice.

PART V.

LEASES AND TENANCIES. (Sects. 139 to 154.)

Extinguishment of reversion.—Sect. 9 of R. P. A. 1845, is re-enacted by sect. **139.** On surrender or merger of a reversion on a lease, the next vested estate becomes the reversion on the lease. No change in the law is effected.

As to leases surrendered for renewal, see sect. 150, *post*.

Assignment of reversion.—Sects. **140**, **141** and **142** must be considered together. They deal with the question whether the benefit of the lessee's covenants and of the condition of re-entry and the burden of the lessor's covenants run with the reversion, and, if they do so run, whether severance of the reversion, or cesser of part of the lease, makes any difference. The common law rule was that, if A. made a lease to B. and then assigned the reversion to C., this assignment passed to C. the right to receive the rent and sue on implied covenants, but not the right to enjoy the benefit of the express covenants entered into by B. with A., or to enforce a condition of re-entry contained in the lease. This was altered by 32 Hen. 8, c. 34, which enabled the assignees of the reversion expectant on a lease to stand in the same position as the lessor from whom they obtained the assignment, with regard to his rights to enforce express covenants and take advantage of conditions of re-entry against the lessee. This remedy was mutual, for the statute also enabled the lessee to sue the assignees of the reversion on all cove-

nants, &c., which he could have enforced against the lessor, provided in both cases that the covenants were such as touched or concerned the thing demised, and were not merely collateral. But the statute of Hen. 8 did not provide for apportionment of the condition of re-entry on severance of the reversion, or on cesser of the lease as to part of the land; in those cases the condition of re-entry was unenforceable, for it was a theory of the common law that a condition is one and indivisible. (*Dumpor's case*, 1 Smith's Leading Cases.)

A partial alteration in this rule was made by sect. 3 of L. P. A. A. 1859, that section providing that, where the rent had been legally apportioned, the assignee of part of the reversion could enforce the condition of re-entry in respect of non-payment of the apportioned part of the rent.

Then came sects. 10, 11 and 12 of C. A. 1881, making wider provisions on the subject. Sect. 10 makes rent and the benefit of the lessee's covenants, having reference to the subject-matter of the lease, and every condition of re-entry, run with the reversion or any severed part of the reversion, while sect. 11 makes the obligation of the lessor's covenants with reference to the subject-matter of the lease run with the reversion or any severed part of the reversion. Sect. 12 provides for the apportionment of every condition or right of re-entry, and every other condition contained in the lease, in the event of severance of the reversion or the avoidance or cesser in any other manner of the term granted by the lease as to part only of the land. But these provisions only apply to leases made after 1881.

Lastly came sect. 2 of C. A. 1911, enabling an assignee of the reversion to enforce the condition of re-entry in spite of the fact that he became entitled to the reversion after the condition of re-entry or forfeiture had become enforceable, unless the condition had been previously waived or released.

Now, all these statutory provisions are replaced by sects. 140—142 of L. P. A. with the amendments mentioned below:—

Apportionment of conditions on severance.—Sect. **140** takes the place of sect. 3 of L. P. A. A. 1859, and sect. 12 of C. A. 1881, and extends the meaning of right of re-entry so as to make it include a right to determine the lease by notice to quit or otherwise, so that an assignee of part of the reversion may give a notice to quit that

part; where he does so, however, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice. This gets rid of the awkward law of *Bebington* v. *Wildman*, (1921) 1 Ch. 559.

A further amendment is that the section applies whenever the leases were made and whenever the severance of the reversionary estate or the partial avoidance or cesser of the term was effected, with, however, a proviso that where the lease was made before 1882 nothing in the section is to affect the operation of a severance of the reversionary estate or partial avoidance or cesser of the term which was effected before 1926.

The practical result of this somewhat complicated proviso is that, in case of leases made before 1882, where the severance took place before 1926, the owner of a severed part of the reversion cannot enforce the condition of re-entry except for non-payment of rent, but if the reversion is severed after 1925 he can enforce the condition in respect of any breach of covenant. The same remark applies to the power of the owner of the reversion to enforce the condition where there has been a partial avoidance or cesser of the term.

Rent and benefit of lessee's covenants run with the reversion. —This is now enacted by sect. **141**, incorporating part of 32 Hen. 8, c. 34, sect. 10 of C. A. 1881, and sect. 2 of C. A. 1911, with two amendments:—

(1) The power of the owner of the reversion to enforce the condition of re-entry in respect of a breach of covenant which occurred before he became entitled to the reversion is extended so as to enable him to "recover, receive, enforce or take advantage of" the rent, or any covenant or provision contained in the lease, although the rent became due or the breach of covenant occurred before he acquired the reversion, provided that he acquired it after 1925. If he acquired the reversion before 1926, he cannot sue for rent due before, or breaches of covenant committed before he acquired it. (*Martyn* v. *Williams*, 1 H. & N. 817.)

(2) The section applies to leases whenever made, but it is not to affect the operation of (a) any severance of the reversionary estate, or (b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision, effected before 1926. In these cases the previous law still applies.

Obligation of lessor's covenants runs with reversion.—This is now dealt with by sect. **142**, incorporating part of 32 Hen. 8, c. 34, and sect. 11 of C. A. 1881, with two amendments:—

(1) The section applies to leases whenever made and whenever the severance of the reversionary estate was effected, with a proviso that where the lease was made before 1882 nothing in the section is to affect the operation of any severance of the reversionary estate effected before such commencement, *i.e.*, the law is as it was before C. A. 1881.

(2) The section takes effect without prejudice to any liability affecting a covenantor or his estate. This was so before, though not expressly stated. The lessor who entered into an express covenant could not free himself or his estate by parting with the reversion. (*Stuart* v. *Joy*, (1904) 1 K. B. 368.)

Effect of licences granted to lessees.—Sect. **143** replaces sects. 1 and 2 of L. P. A. A. 1859, which saved the condition of re-entry in a lease from being altogether destroyed by a licence to commit a particular breach of covenant. Though the language is different, no change in the law appears to be made. Out of abundance of caution the section says that it does not authorise the grant after 1925 of a licence to create an undivided share in a legal estate. (Cp. sect. 148, *post*, which deals with *waiver* of a covenant in a lease.)

No fine to be exacted for licence to assign.—The provision to this effect in sect. 3 of C. A. 1892 is repeated almost word for word by sect. **144**.

Lessee to give notice of ejectment to lessor.—There is nothing new in sect. **145**, which replaces sect. 209 of the Common Law Procedure Act, 1852. A lessee served with or knowing of a writ to recover the demised premises must forthwith give the lessor or his agent notice on pain of forfeiting three years' rack rent.

Restrictions on and relief against forfeiture.—Sect. 14 of C. A. 1881, and sects. 2, 4 and 5 of C. A. 1892, are amalgamated in sect. **146** with one important amendment, viz., that the provisions of the section requiring a lessor to serve notice before forfeiture and giving the Court power to grant relief will extend after 1925 to a covenant or condition against assigning, underletting, parting with the possession, or disposing of the land leased, provided the breach of covenant is committed after 1925. Breaches of such a covenant committed before 1926 will still be outside the section.

Another slight amendment is that in sub-sect. 4, which replaces sect. 4 of C. A. 1892, it is expressly mentioned, as was not the case in the old section, that an underlessee can ask for relief where the head lease is forfeited for non-payment of rent. This does not, however, alter the law. *Gray* v. *Bonsall*, (1904) 1 K. B. 601, so decided. Apart from this, forfeiture and relief in case of non-payment of rent are excepted from the section, being still governed by the Common Law Procedure Acts, 1852 and 1860.

One other point may be noticed, though it is not an amendment, and that is the manner in which the provisions of the Acts of 1881 and 1892 as to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest have been amalgamated. The section first excludes from its operation such a condition in the case of leases of (a) agricultural or pastoral land; (b) mines or minerals; (c) a house used or intended to be used as a public-house or beershop; (d) a house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures; and (e) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

It then goes on to provide that where a condition of forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest is contained in any lease, other than a lease of any of the classes above mentioned, then—

(a) if the lessee's interest is sold within one year from the bankruptcy or taking in execution, this section applies to the forfeiture condition aforesaid;

(b) if the lessee's interest is not sold before the expiration of that year, this section only applies to the forfeiture condition aforesaid during the first year from the date of the bankruptcy or taking in execution.

Whether this leaves the law exactly as it was previously (as to which see *Civil Service Co-operative Society* v. *McGrigor's Trustee*, (1923) 2 Ch. 347) is a point which will have to be settled by the Courts. The provision is not easy to interpret. It seems to expect from the lessor the gift of prophecy during the first year.

Relief against notice to effect decorative repairs.—The policy of sect. 14 of C. A. 1881 (see previous section), is carried a step further by sect. **147**, which provides that after a notice relating to internal decorative repairs is served on a lessee, whether before or after the commencement of the Act, he may apply to the Court for relief, and, if the Court (having regard specially to the unexpired length of the term) thinks the notice unreasonable, it may relieve him wholly or partially from liability for such repairs. Lease in the section includes an underlease and an agreement for a lease. The section applies notwithstanding any stipulation to the contrary, even if the notice was served before 1926.

The section, however, does not apply (i) where the liability arises under an express agreement to put the property in decorative repair and the agreement has never been performed; or (ii) to any matter necessary or proper (a) for putting or keeping the property in a sanitary condition, or (b) for the maintenance or preservation of the structure; or (iii) to any statutory liability to keep a house reasonably fit for human habitation (see Housing, Town Planning, &c. Act, 1909, s. 15 (1)); or (iv) to any covenant or stipulation to yield up the house or other building in a specified state of repair at the end of the term.

Waiver of covenant in a lease.—Sect. **148** repeats sect. 6 of L. P. A. A. 1860—that a particular waiver by a lessor of the benefit of a covenant or condition is not to be treated as a general waiver. See also sect. 143 above.

Interesse termini abolished.—The grant of a lease at common law in itself conferred no estate upon the lessee before entry, but an inchoate right, called an *interesse termini*, which became technically an estate upon possession being taken. The doctrine of *interesse termini* is now abolished, and it is provided that leases (whether made before or after the Act) take effect at law or in equity from the commencement of the term without actual entry. (Sect. **149** (1) and (2).) This is not to affect prejudicially the right of any person to recover rent or enforce covenants or conditions, nor, in case of terms or interests created before 1926, is it to operate to vary any statutory or other obligations imposed in respect of such terms or interests. (Sect. 149 (4).)

Certain reversionary terms avoided.—A term at a rent or granted in consideration of a fine created after 1925 to take effect

more than twenty-one years from the date of the instrument is void. Contracts to create such a term are also avoided. But these provisions do not apply to leases taking effect in equity under a settlement (*e.g.*, the portions term in a strict settlement) or created out of an equitable interest under a settlement or under an equitable power for mortgage, indemnity or other like purposes. (Sect. 149 (3).) But nothing in the Act is to affect the rule of law that a legal term, whether a mortgage term or not, may be created to take effect in reversion expectant on a longer term. In fact, the Act expressly confirms the rule. (Sect. 149 (5).) This means that a lease may be made of the reversion. For instance, if A. has granted to B. a lease for ninety-nine years, he may grant C. a lease for twenty-one years. This will not, of course, entitle C. to possession of the land, but it will operate as an assignment of A.'s reversion to C. for twenty-one years, and C. will become B.'s landlord for that period.

Leases for lives.—Certain leases and underleases will, after 1925, take effect as leases for a term of ninety years determinable in manner specified. (Sect. 149 (6).) The leases and subleases which thus take effect as for a ninety years' term are:—

(1) Leases or underleases, at a rent, or in consideration of a fine, for life or lives or any term of years determinable with life or lives or on the marriage of the lessee, or any contract therefor, made before or after the Act. (See also *ante*, p. 96.)

(2) Leases created by virtue of Part V. of the L. P. A. 1922, *ante*, p. 67, as a result of the enfranchisement of copyholds for life not perpetually renewable.

But terms taking effect in equity under a settlement or created out of an equitable interest under a settlement for mortgage, indemnity or other like purposes are not within these provisions.

The ninety years' term to which leases above mentioned in future give rise is determinable after the death or marriage (as the case may be) of the original lessee or survivor of the original lessees by a month's notice on either side, expiring with one of the quarter days applicable to the tenancy, or with one of the usual quarter days if there are no quarter days specially applicable to the tenancy. Where the lease, underlease or contract was determinable on the dropping of the lives of persons other than or besides the lessees, notice can be given after the death of the person or survivor of the

persons, whether including the lessees or not, on whose life or lives the lease depended. (Sect. 149 (6).)

Surrender of lease for renewal.—Sect. **150** re-enacts sect. 6 of the Landlord and Tenant Act, 1730, which enabled a lessee to surrender his lease for renewal without a surrender of any sublease, and preserved to the lessee, by virtue of the new lease, the same remedies against the sublessee, and to the original lessor the same remedies by distress and entry in respect of rent and covenants contained in the new lease (so far as not more onerous than those reserved by the original lease) as if the original lease was still in force. No change appears to be made in the law.

Compare with this the wider provisions of sect. 139, *ante*.

Attornments.—Sect. **151** replaces in a modern form the provisions of 4 & 5 Anne, c. 3, ss. 9, 10, and sect. 11 of the Distress for Rent Act, 1737, with regard to attornments.

Where land is subject to a lease, the conveyance of the reversion is valid without any attornment of the lessee, and so is the creation or conveyance of a rent-charge to issue or issuing out of the land. But this will not affect the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or render the lessee liable for failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee.

An attornment by the lessee to a person claiming to be entitled to the interest in the land of the lessor, if made without the consent of the lessor, will be void, except where made (a) pursuant to a judgment of a Court of competent jurisdiction; or (b) to a mortgagee, by a lessee holding under a lease from the mortgagor where the right of redemption is barred; or (c) to any other person rightfully deriving title under the mortgagor.

No change appears to be made in the law.

Leases under powers.—The Leases Acts, 1849 and 1850, are incorporated in sect. **152.** They provide for leases made under powers being upheld as contracts for leases under certain conditions in the event of their being invalid through non-compliance with the terms of the power.

Enlargement of long terms. The provisions of sect. 65 of C. A. 1881, as amended by sect. 11 of C. A. 1882, are re-enacted with amendments by sect. **153.** As regards beneficial owners, the person who can effect the enlargement is "any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, and in the case of a married woman without the concurrence of her husband, whether or not she is entitled for her separate use or as her separate property, or is subject to a restraint on anticipation." Also, after 1930, it will be possible sometimes to enlarge a long term into a fee simple although a money rent was originally reserved, since a rent not exceeding 1*l.* a year which has not been collected or paid for a continuous period of twenty years or upwards is to be deemed to have ceased to be payable, provided of the said period at least five years have elapsed after 1925. And no claim for such rent or any arrears can be enforced after it is deemed to have ceased to be payable.

Application of Part V. to existing leases.—This Part of the Act, except where otherwise expressly provided, applies to leases created before or after the Act, and "lease" includes an underlease or other tenancy. (Sect. **154.**)

PART VI.

POWERS. (Sects. 155 to 160.)

Release and disclaimer.—Sect. 52 of C. A. 1881, and sect. 6 of C. A. 1882, are replaced without alteration by sects. **155** and **156.**

Fraudulent appointment.—It was decided in *Cloutte* v. *Storey*, (1911) 1 Ch. 18, that a purchaser of property fraudulently appointed under a power operating over the equitable interest only obtains no title to the property appointed. This decision becomes of greater importance even than before owing to the conversion of most legal powers into equitable by sect. 1 of the Act; but it is to some extent overridden by sect. **157** in the case of purchases made after 1925, whether the appointment was made before or after the commencement of the Act, but only if the appointee is one of the persons entitled in default of appointment. In such a case the appointment is not to be void against a purchaser in good faith or person deriving title under a purchaser in good faith, who is defined as a person

dealing with an appointee of the age of not less than twenty-five years for valuable consideration in money or money's worth and without notice of the fraud or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

But the protection afforded by the section only extends to the interest in the property to which immediately before the appointment the appointee was presumptively entitled in default of appointment, having regard to any advances in his favour and to any hotchpot provision.

Validation of appointments where objects are excluded or take illusory shares.—The Illusory Appointments Act, 1830, and the Powers of Appointment Act, 1874, now together constitute sect. **158** of L. P. A. No alteration in the law is made.

Execution of powers not testamentary.—Sect. 12 of L. P. A. A. 1859, making a deed with two witnesses a valid execution of a power to appoint by deed, or by any instrument not testamentary, reappears without any change in substance in sect. **159.**

Part VI. applies to powers whenever created. (Sect. **160.**)

PART VII.

PERPETUITIES AND ACCUMULATIONS. (Sects. 161 to 166.)

PERPETUITIES. (Sects. 161 to 163.)

Double possibility.—The rule prohibiting a limitation of land to the issue of an unborn person after a life estate given to that unborn person is abolished as regards instruments coming into operation after 1925. (Sect. **161.**) This rule—often called the rule in *Whitby* v. *Mitchell* (1890), 44 Ch. D. 85—is a special rule applicable to remainders, and is independent of the ordinary perpetuity rule. The abolition of legal remainders effected by the Act would not by itself have abrogated this rule, for it has been held to apply to equitable remainders as well as to legal. (*Re Nash, Cook* v. *Frederick*, (1910) 1 Ch. 1.)

The section expressly says that it does not prejudice any other rule relating to perpetuities. There will only be one after 1925—a great simplification, for at present there are three rules of remoteness—(1) the common law rule as to the vesting of a legal remainder;

(2) the *Whitby* v. *Mitchell* rule, applying to remainders, legal or equitable; (3) the ordinary perpetuity rule. After 1925 only the third will remain.

Outside the rule.—Sect. **162**, to remove doubts, declares that the perpetuity rule does not apply and has never applied to—

(a) a power to distrain on or take possession of land or income thereof given by way of indemnity against a rent; or

(b) a rent-charge created only as an indemnity against another rent-charge; or

(c) a power to retain or withhold payment of any instalment of a rent-charge as an indemnity against another rent-charge; or

(d) any grant, exception or reservation of any right of entry on, or user of, the surface of land or of any easement, &c. for the purpose of working, &c. mines and minerals, or felling, &c. timber, or executing repairs, alterations or additions to adjoining land or buildings, or constructing, &c. sewers, water pipes, gas pipes, &c.

Validation of certain void gifts.—A gift is often void because it postpones vesting to an age exceeding twenty-one years. Where this occurs in an instrument executed after 1925, or under a testamentary appointment, devise or bequest contained in the will of a person dying after 1925, sect. **163** substitutes twenty-one years for the age actually specified, so as to prevent the gift, or any gift over, from offending the rule. If the instrument makes the gift vest also on marriage or any other event which may occur before the age specified, the section will not prevent the gift vesting on the event occurring under 21.

Accumulations. (Sects. 164 to 166.)

Accumulations.—Sects. **164** to **166** may be read together. They take the place of the Accumulations Acts, 1800 and 1892. For the most part the old law is reproduced, but there are the following alterations:—

(1) The exception as to accumulation for portions is made clearer. The section does not prevent accumulations being made for raising portions for any child, or remoter issue of any grantor, settlor or testator, or for any child or remoter issue of a person taking any

interest under any settlement or other disposition directing the accumulations, or to whom any interest is thereby limited. (Sect. 164 (2).)

(2) Where accumulations of surplus income are made during minority under any statutory power (*e.g.*, under sect. 31 of T. A., *post*, which replaces sect. 43 of the C. A. 1881) or under the general law, the period of accumulation is not to be taken into account in deciding whether an express trust for accumulation is good or bad. This applies whether the trust was created or the accumulations were made before or after the Act. (Sect. 165.) There was some doubt on the point formerly.

(3) The prohibition on the accumulation of income for the sole purchase of buying land for longer than the minority of the person who would if of full age be entitled to receive the income is not to apply to accumulations to be held as capital money for the purposes of S. L. A., whether or not the accumulations are primarily to be laid out in the purchase of land. (Sect. 166.)

PART VIII.

Married Women and Lunatics. (Sects. 167 to 171.)

Married Women. (Sects. 167 to 170.)

Acknowledgment.—The necessity for acknowledgment under the Fines and Recoveries Act, 1833, and the Married Women's Reversionary Interests Act, 1857, and any other Act, is abolished as regards deeds (including disclaimers) executed by a married woman after 1925. (Sect. **167** (1).) But the husband's concurrence will still be necessary where necessary now. (*Ibid.* (4).) Similarly after 1925 separate examination of a married woman will not be necessary before money can be paid out of Court to her. (*Ibid.* (2).)

Where the Court dispenses with the husband's concurrence, and is satisfied that the wife is entitled for her separate use, the Court may declare that her disposition alone shall have the same effect as if the husband had concurred and disposed of his rights. (*Ibid.* (3).)

Disclaimer.—The doubt whether a married woman can disclaim land or a trust estate without her husband's concurrence is set at rest by sect. **168**, which declares that the husband's concurrence is not necessary where, if there were no disclaimer, the wife would have been entitled to the property as her separate estate, or as her separate

property, or where the property consists of a trust estate. In the unlikely case of the property not being a trust estate or separate property, the husband must still concur, but no acknowledgment is necessary. (See sect. 167 above.) This section takes the place of sect. 7 of R. P. A. 1845.

Restrained property.—Sect. **169** repeats sect. 7 of C. A. 1911, as regards the Court's power, with the married woman's consent, to bind her interest in any property which she is unable to alienate. This provision, however, is not of so much importance as heretofore, for after 1925 a married woman, even if entitled in fee simple, will be able to dispose of land which is subject to restraint on anticipation, under S. L. A. ss. 1, 20 and 25, *post*.

Trustee or personal representative.—Sect. 1 of the Married Women's Property Act, 1907, is re-enacted in a more explicit form by sect. **170**. The section gives a married woman power to acquire from any one (including her husband), and hold, any interest in any property solely or jointly with her husband or any other person as trustee or personal representative, just as if she were a *feme sole*. And the doubt raised by some writers, whether the husband's concurrence is not still necessary to a conveyance by a married woman trustee or personal representative (see Gibson's Conveyancing, p. 13), is set at rest. He need not concur. The section renders valid all such acquisitions and dispositions after 1882.

LUNATICS. (Sect. 171.)

Court's power to settle their beneficial interests.—Very wide powers are given to the Court (*i.e.*, the Judge in Lunacy except so far as rules of Court provide that it shall be the High Court) to direct a settlement to be made of any property of a lunatic or defective, and this notwithstanding any testamentary disposition made by him while of full testamentary capacity. It does not apply when he is an infant. (Sect. **171**.)

PART IX.

VOIDABLE DISPOSITIONS. (Sects. 172 to 174.)

Frauds on creditors.—A very old friend of lawyers in the shape of 13 Eliz. c. 5 disappears and re-appears in a modern dress as sect. **172** of L. P. A. Save as provided in this section, says the

section, every conveyance of property made, whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced. This provision does not (a) affect the operation of a disentailing assurance [this merely means, apparently, that the assurance will still be effective to bar the entail] or the law of bankruptcy for the time being in force, or (b) extend to any estate or interest in property conveyed for valuable consideration and in good faith, or upon good consideration and in good faith, to any person not having, at the time of the conveyance, notice of the intent to defraud creditors.

The section is unfortunately worded. The words "and in good faith" apparently apply to the person conveying, but how he can be acting in good faith when he is intending to defraud his creditors it is difficult to see. If the words are read as applying to the person conveying, the clause appears to be ineffective to protect a purchaser; if not so read, the clause protects a person who takes for good consideration, which is an innovation.

Frauds on purchasers.—Another old friend—27 Eliz. c. 4—disappears and is re-enacted, as amended by the Voluntary Conveyances Act, 1893, by sect. **173**. Every voluntary disposition of land, says the section, made with intent to defraud a subsequent purchaser, is voidable at the instance of that purchaser. For the purpose of this section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance was made after 28th June, 1893. The section seems merely to state the existing law.

Sales of Reversions Act, 1867, is reproduced by sect. **174** in a better form. "(1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of undervalue. In this sub-section 'reversionary interest' includes an expectancy or possibility. (2) This section does not affect the jurisdiction of the Court to set aside or modify unconscionable bargains."

The section appears to make no alteration in the Act as interpreted by the Courts.

PART X.

WILLS. (Sects. 175 to 179.)

Contingent gifts to carry intermediate income.—Under wills coming into operation after 1925, except so far as the income is not otherwise expressly disposed of,—

(i) a contingent or future specific devise or bequest of property, real or personal, and

(ii) a contingent residuary devise of freehold land, and

(iii) a specific or residuary devise of freehold land to trustees upon trust for persons whose interests are contingent or executory,

will carry the income from testator's death, subject to the statutory provisions as to accumulations. (See sects. 164 to 166, *ante*.) This is by sect. **175**. The section does not mention a residuary bequest of personalty, or a bequest of personalty to trustees, for by the existing law such gifts already carry the intermediate income. (See also sect. 31 of T. A., *post*.)

Will of tenant in tail.—An entirely novel power of disposing by will of property of which the testator is tenant in tail in possession is conferred by sect. **176**. The section only applies to wills executed after 1925, or confirmed or republished by codicil after that date. The testamentary power extends to (a) all property of which the testator is tenant in tail in possession at his death, and (b) money (including the proceeds of property directed to be sold) to be invested in the purchase of property of which if it had been so invested he would have been tenant in tail in possession at his death. And "tenant in tail" includes an owner of a base fee in possession who has power to enlarge the base fee without anyone's concurrence, but not a tenant in tail who is by statute restrained from barring his estate tail, nor a tenant in tail after possibility of issue extinct. The tenant in tail must be of full age, and the will must refer specifically either to the property or to the instrument under which it was acquired or to entailed property generally. A general devise or bequest will, therefore, not pass entailed property.

Where the property is disposed of by the will of the tenant in tail, it will vest in his personal representatives (A. E. A. s. 3 (2), *post*), and will be subject to his debts, but any interest which is not disposed of by his will is not rendered by sect. 176 liable for his debts or other liabilities. (Sect. 176 (2).)

Marriage is not to revoke a will expressed to be made in contemplation of the marriage. This only applies to wills made after 1925. (Sect. **177.**)

Bastard's will.—To remove doubts arising under sect. 3 of the Wills Act, 1837, sect. **178** says that a person who, by reason of illegitimacy or otherwise, leaves no heir or next of kin, can, and always could, dispose of realty or chattels real by his will. The doubt arose through the section authorising any person to devise "real estate . . . . which . . . . if not so devised . . . . would devolve upon the heir-at-law of him." Of course, if a bastard dies without issue he can have no heir. The doubt was expressed in the first nineteen editions of Williams' Real Property, but the present editor of that book thinks it unfounded (22nd ed. p. 57).

Forms to which a testator may refer in his will may be published from time to time by the Lord Chancellor, but unless so referred to they will not be deemed incorporated. (Sect. **179.**) The section is purely permissive and of little value.

PART XI.

MISCELLANEOUS. (Sects. 180 to 200.)

MISCELLANEOUS. (Sects. 180 to 189.)

Corporation sole.—By sect. **180**, any property vested at any time in a corporation sole (including the Crown) passes to, and is to be deemed always to have passed to, his successors, unless and until otherwise disposed of by the corporation. It does not vest on the death of a corporation sole in his personal representatives. (See also sect. 3 (5) of A. E. A., *post*.) There has been difficulty about this in the past. The same section also meets the difficulties sometimes experienced as to the effect of a corporation sole acquiring any interest in or charge on property when there is a vacancy in the office. Operating restrospectively, the section says that the property shall vest, and be deemed always to have vested, in the successor on his appointment, subject to his power to disclaim. And the same provision applies where there is a vacancy in the office of the head of a corporation aggregate if the vacancy affects the status or powers of the corporation. Similarly the section provides that a contract or other transaction expressed or purported to be made with a corporation sole, or any appointment

of a corporation sole as trustee, or as a personal representative during a vacancy in the office, will take effect, and always has taken effect, on the vacancy being filled.

Dissolution of a corporation.—Sect. **181** provides that where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the Court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate. On the dissolution of a corporation in which land was vested, freehold land reverts to the grantor, leaseholds determine and the lessor gets back the land, while pure personalty goes to the Crown. (*Hastings Corporation* v. *Letton*, (1908) 1 K. B. 378.) The power given by the section may prove useful sometimes when the corporation held property on trust, though that case is also met by sect. 44 of T. A., *post*, which allows the Court to make a vesting order.

Protection of solicitors.—Sect. **182** endeavours to secure as far as possible the adoption of the Act by re-enacting sect. 66 of C. A. 1881, and extending it to matters enacted by this Act. All powers given by the Act, all covenants, &c. implied by the Act, are to be deemed proper, and a solicitor is not to be liable for not excluding the operation of the Act. Nor are trustees, whether they act through a solicitor or for themselves.

Fraudulent concealment of documents and falsification of pedigrees.—Sect. **183** repeats the provisions of sect. 24 of L. P. A. A. 1859, and sect. 8 of L. P. A. A. 1860, with regard to the criminal and civil liability of a vendor or his solicitor or other agent for fraudulent concealment of any material instrument or incumbrance or any fraudulent falsification of a pedigree.

Commorientes.—Where after 1925 two persons die in circumstances rendering it uncertain which of them survived the other, for all purposes affecting the title to property the younger is to be presumed to have survived the elder, subject to any order of the Court. (Sect. **184.**) According to the present law no presumption of survivorship arises from age or sex. (*Wing* v. *Angrave*, 8 H. L. C. 183.) The alteration is likely to increase death duties.

Merger.—There is no merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be

merged or extinguished in equity. (Sect. **185.**) This is merely sect. 25 (4) of the Judicature Act, 1873, repeated.

Rights of pre-emption capable of release.—By sect. **186**, all statutory and other rights of pre-emption affecting a legal estate shall be and be deemed always to have been capable of release, and unless released shall remain in force as equitable interests only.

Legal easements.—Where an easement, right or privilege for a legal estate is created, it will enure for the benefit of the land to which it is intended to be annexed. (Sect. **187** (1).)

Nothing in the Act affects the right of a person to acquire, hold or exercise an easement, right or privilege over or in relation to land for a legal estate in common with any other person, or the power of creating or conveying such an easement, right or privilege. (Sect. 187 (2).)

Power to direct division of chattels. -Where any chattels belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to the Court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the Court may make such order and give any consequential directions as it thinks fit. (Sect. **188.**)

Distress as indemnity against rent. -Doubts have existed whether a power to distrain given by way of indemnity against a rent, or against the breach of any covenant or condition in relation to land, *e.g.*, cross powers of distress given to underlessees of different parts of the premises comprised in the head lease, made the instrument containing such power or powers a bill of sale. Sect. **189** (1) now declares that such an instrument is not and never has been a bill of sale.

The benefit of such a power, and any other power or covenant given by way of indemnity against a rent, or against the breach of any covenant or condition in relation to land, is, and is to be deemed always to have been, annexed to the land intended to be benefited, and may be enforced by the estate owner for the time being although not expressly assigned to him. (Sect. 190 (2).)

Such a power to distrain is not within the perpetuity rule. (Sect. 162, *ante*.)

Redemption and Apportionment of Rents.
(Sects. 190 to 192.)

Equitable apportionment of rents and remedies for non-payment.—Useful provisions are contained in sect. **190** to meet the common case where part of land affected by a rent-charge is conveyed, and the rent-charge is, without the owner's consent, apportioned or charged exclusively on the land conveyed, or on the land retained. Such apportionment or charge, though binding between the grantor and grantee, is not binding on the owner of the rent-charge, who can recover the whole rent out of any part of the land charged, or from any freeholder. (See *Cundiff* v. *Fitzsimmons*, (1911) 1 K. B. 513.) It is usual, therefore, to insert powers, or cross powers, of entry and distress in case one of the tenants is compelled to pay what ought to be paid by another tenant. Sect. 189 dispenses with the necessity of inserting these powers, for, in the absence of a contrary intention expressed, they are to be implied in a conveyance for valuable consideration, other than a mortgage, effected after 1925, of part of land affected by a rent-charge, unless the owner has assented to an apportionment or exclusive charge on part of the land. For details of the powers reference should be made to the section; they follow the same lines as the ordinary express powers. There will be no need to limit their operation to the period allowed by the perpetuity rule, for it is expressly declared that the rule does not affect the implied powers or remedies, or any like powers or remedies expressly conferred, before or after the Act, by an instrument. (Sect. 189 (8). Cp. sect. 162, *ante*.) Nor is it necessary to register the conveyance as a bill of sale. (Sect. 190, *post*.)

By the same section, 189 (3), similar powers of entry and distress are to be implied in a conveyance for valuable consideration, other than a mortgage, effected after 1925, of part of land comprised in a lease.

Redemption of rents.—Sect. 45 of the C. A. 1881, which provides for the redemption of certain rents through the medium of the Ministry of Agriculture and Fisheries, is re-enacted with amendments by sect. **191.**

The Minister is empowered in certain cases to authorise the owner of the land to pay the redemption money into Court, *e.g.*, where the person in receipt of the rent cannot or will not prove his title, or the

person entitled cannot be found or ascertained, or for any reason a tender of the redemption money cannot be effected. (Sect. 191 (4).)

Further, provision is made for the apportionment of a rent by the Minister when it is desired to discharge part of the land from the rent. (*Ibid.* (7).)

The scope of the section is extended. It still does not apply to tithe rent-charge or other payment redeemable under the Tithe Acts, 1836 to 1918, nor to a rent reserved on a lease or tenancy. (*Ibid.* (12).) But by sub-sect. (1) it is made to apply to a rent reserved on a sale, or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes—these were expressly excluded from sect. 45—and also to a compensation rent-charge created as the consideration for the extinguishment of manorial incidents. (See *ante*, p. 76.) Nor need the rent be perpetual, as was formerly the case, but if it is not perpetual the Minister may authorise the purchase of a Government annuity. (*Ibid.* (1).) A rent may be redeemed whether or not it is settled, or held on trust for sale, or on trust for charitable, ecclesiastical, public, or other purposes, or is subject to incumbrances. (*Ibid.* (11).)

Apportionment of charges payable for redemption of tithe rent-charge.—By sect. **192** an order of apportionment of a charge on land by way of annuity for redemption of tithe rent-charge may be made by the Minister of Agriculture and Fisheries under sects. 10 to 14 of the Inclosure Act, 1854, on the application of any person interested, without the concurrence of any other person. But the Minister may, on the application of any person interested in the annuity, require that any apportioned part of the annuity not exceeding 2*l.* a year shall be redeemed forthwith.

Commons and Waste Lands. (Sects. 193 and 194.)

Public access.—By sect. **193**, after 1925, members of the public will have rights of access for air and exercise to certain wastes and commons, viz.:—

(a) A metropolitan common within the Metropolitan Commons Acts, 1866 to 1898;

(b) Manorial waste or a common wholly or partially situate within a borough or urban district; and

(c) Any land which, at the commencement of the Act, is subject to rights of common and which the lord of the manor or

other person entitled to the soil declares to be within the section by a deed, revocable or irrevocable, deposited with the Minister of Agriculture and Fisheries. (Sect. 193 (1) and (2).)

The rights of the public will be subject to (a) any Act, scheme or provisional order for the regulation of the land and any bye-law or regulation made thereunder, or under any other statutory authority (*e.g.*, such enactments as the Military Lands Acts and the Military Manœuvres Acts), and (b) any limitations imposed in particular cases by the Minister. They will not include any right to draw or drive any vehicle on the land or to camp or light any fire thereon (*ibid.* (1)), and a 40*s.* fine may be imposed for doing any of these things. (*Ibid.* (4).) The rights will cease in some cases where the commonable rights are extinguished. (*Ibid.* (1).)

Mining rights are not to be prejudiced by the section. (*Ibid.* (5).)

The section does not apply to any common or manorial waste which is for the time being held for Naval, Military or Air Force purposes, and in respect of which rights of common have been extinguished or cannot be exercised.

Restriction on inclosure.—Further protection to the public is afforded by sect. **194.** After 1925 it will not be lawful, without the consent of the Minister of Agriculture and Fisheries, to erect any building or fence or to construct any other work whereby access to any land, which at the commencement of the Act is subject to rights of common, is prevented or impeded. If a building or fence is erected or any other work constructed without such consent, the County Court may order its removal. The section does not apply to any building or fence erected or work constructed under statutory authority or lawfully erected or constructed in connection with taking or working minerals in or under the land, or to any telegraphic line of the Postmaster-General; and it will cease to apply in some cases where the rights of common are extinguished.

Judgments affecting Land. (Sect. 195.)

Equitable charge in right of judgment debt, &c.—There seems to be nothing new in sect. **195.** It takes the place of the Judgments Act, 1838, s. 13, as amended by sect. 2 of the Land Charges Act, 1900. Judgments and Crown debts are not a charge on land until a writ of execution is registered in the Land Registry.

NOTICES. (Sects. 196 to 200.)

Service of notices.—Sect. 67 of C. A. 1881 laid down certain rules as to the service of notices, but the section only applied to notices required or authorised by C. A. The section is re-enacted by sect. **196,** and made to apply, not only to notices required or authorised by the Act, but also, unless a contrary intention appears, to notices required to be served by an instrument affecting property executed or coming into operation after 1925. Thus (*inter alia*), the notice must be in writing, and may be served by registered post, or sometimes left on the premises.

Middlesex and Yorkshire. Registration of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage is to be deemed to constitute actual notice of the transfer, &c. But registration of an instrument not requiring registration will not constitute actual notice (sect. **197**), nor affect any priority. (Sect. 11, *ante*.) The section does not prejudice the right of a prior mortgagee to tack further advances. (See sect. 94, *ante*.)

Registration under L. C. A. to be notice.—Sect. **198** makes registration under L. C. A., or any enactment which it replaces, in any register kept at the land registry or elsewhere, actual notice of the instrument or matter registered and of the fact of registration.

The section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee (see sect. 94, *ante*), and applies only to instruments and matters required or authorised to be registered under L. C. A. (See *post*, pp. 341 *et seq.*)

Restrictions on constructive notice.—Sect. 3 of C. A. 1882, which summed up the law of constructive notice, is re-enacted by sect. **199,** with the addition of a paragraph stating that a purchaser is not to be prejudicially affected by notice of any instrument or matter capable of registration under L. C. A., or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of non-registration.

Notice of restrictive covenants and easements.—Sect. **200** re-enacts sect. 11 of C. A. 1911, which entitles a purchaser, when he buys part of land held under a common title and does not get the title deeds, to have a memorandum indorsed on one of the title deeds giving notice of any provision contained in the disposition

to him restrictive of user of, or giving rights over, any other land contained in the common title. The new section adds that it is not to affect the obligation to register as land charges restrictive covenants on freehold land, estate contracts and equitable easements, liberties or privileges. (See L. C. A. s. 10, *post.*) In other words, the purchaser must not be content with the memorandum being indorsed; he must also register a land charge in order to bind subsequent purchasers.

PART XII.

Construction, Jurisdiction, and General Provisions.

(Sects. 201 to 209.)

Incorporeal hereditaments.—The provisions of the Act relating to freehold land apply to manors, reputed manors, lordships, advowsons, tithe and perpetual rent-charges, and other incorporeal hereditaments, subject only to the qualifications necessarily arising by reason of the inherent nature of the hereditament affected. (Sect. **201** (1).)

Benefices Act, 1898.—The Act does not affect the special restrictions imposed on dealings with advowsons by the Benefices Act, 1898, or any other statute or measure (see Benefices Act, 1898 (Amendment), Measure, 1923, 43 "Law Notes," p. 343), nor affect the limitation of, or authorise any disposition to be made of, a title or dignity of honour which in its nature is inalienable. (Sect. 201 (2).) But this section takes effect subject to the express provisions of the Act relating to undivided shares.

The enfranchisement of copyholds and conversion of perpetually renewable leaseholds effected by L. P. A. 1922 (see *ante*, pp. 66, 91), is deemed, for purposes of this Act, to have been effected immediately before the commencement of this Act. (Sect. **202.**)

Payment into Court effectually exonerates the person making the payment. (Sect. **203** (1).)

Procedure.—Subject to any rules of Court to the contrary, all applications under the Act, save as otherwise expressly provided, are to be by summons at chambers. On application by a purchaser, notice is to be served, in the first instance, on the vendor and *vice versâ*, and on any application, notice is to be served on such persons, if any, as the Court thinks fit. (Sect. 203 (2).)

Court, unless the contrary appears, means High Court, and also the Lancaster or Durham Court of Chancery, or the County Court, where those Courts have jurisdiction. (Sect. 203 (3).) High Court matters, save as otherwise expressly provided and subject to the Supreme Court of Judicature (Consolidation) Act, 1925, are to be assigned to the Chancery Division. (Sect. 203 (4).)

Orders of Court conclusive.—Sect. **204** repeats the provision of sect. 70 of C. A. 1881, making orders of the Court conclusive in favour of a purchaser. The only alteration is that the reference to the Settled Estates Act, 1877, is omitted, and a general provision substituted that the section is to have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of any statutory power, notwithstanding any exception in such statute.

General definitions.—These are contained in sect. **205**, which runs as follows:—

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

(i) "Bankruptcy" includes liquidation by arrangement; also in relation to a corporation means the winding up thereof;

(ii) "Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will; "convey" has a corresponding meaning; and "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and "dispose of" has a corresponding meaning;

(iii) "Building purposes" include the erecting and improving of, and the adding to, and the repairing of buildings; and a "building lease" is a lease for building purposes or purposes connected therewith;

(iv) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on a death;

(v) "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner;

(vi) "Gazette" means the *London Gazette*.

(vii) "Incumbrance" includes a legal or equitable mortgage and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and "incumbrancer" has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;

(viii) "Instrument" does not include a statute, unless the statute creates a settlement;

(ix) "Land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof; and "manor" includes a lordship, and reputed manor or lordship; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir;

(x) "Legal estates" mean the estates, interests and charges, in or over land (subsisting or created at law) which are by this Act authorised to subsist or to be created as legal estates; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under this Act;

(xi) "Legal powers" include the powers vested in a chargee by way of legal mortgage or in an estate owner under which a legal estate can be transferred or created; and "equitable powers" mean all the powers in or over land under which equitable interests or powers only can be transferred or created;

(xii) "Limitation Acts" mean the Real Property Limitation Acts, 1833, 1837 and 1874, and "limitation" includes a trust;

(xiii) "Lunatic" includes a lunatic whether so found or not, and, in relation to a lunatic not so found, "committee" includes a person on whom the powers of a committee are conferred under section one of the Lunacy Act, 1908; "defective" includes every person affected by the provisions of section one hundred and sixteen of the Lunacy Act, 1890, as extended by section sixty-four of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed;

(xiv) A "mining lease" means a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes;

(xv) "Minister" means the Minister of Agriculture and Fisheries;

(xvi) "Mortgage" includes any charge or lien on any property for securing money or money's worth; "legal mortgage" means a mortgage by demise or sub-demise or a charge by way of legal mortgage, and "legal mortgage" has a corresponding meaning; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate, interest or right in the mortgaged property; "mortgagee" includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee; and "mortgagee in possession" is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property; and "right of redemption" includes an option to repurchase only if the option in effect creates a right of redemption;

(xvii) "Notice" includes constructive notice;

(xviii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the Court;

(xix) "Possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rents and profits;

(xx) "Property" includes any thing in action, and any interest in real or personal property;

(xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee, or other person who for valuable consideration acquires an interest in property except that in Part I. of this Act and elsewhere where so expressly provided "purchaser" only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; "purchase" has a meaning corresponding with that of "purchaser"; and "valuable consideration" includes marriage but does not include a nominal consideration in money;

(xxii) "Registered land" has the same meaning as in the Land Registration Act, 1925, and "Land Registrar" means the Chief Land Registrar under that Act;

(xxiii) "Rent" includes a rent service or a rent-charge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; "rent-charge" includes a fee farm rent; "fine" includes a premium or foregift and any payment, consideration, or benefit in the nature of a fine, premium or foregift; "lessor" includes an underlessor and a person deriving title under a lessor or underlessor; and "lessee" includes an underlessee and a person deriving title under a lessee or underlessee, and "lease" includes an underlease or other tenancy;

(xxiv) "Sale" includes an extinguishment of manorial incidents, but in other respects means a sale properly so called;

(xxv) "Securities" include stocks, funds and shares;

(xxvi) "Tenant for life," "statutory owner," "settled land," "settlement," "vesting deed," "subsidiary vesting deed," "vesting order," "vesting instrument," "trust instrument," "capital money," and "trustees of the settlement"

have the same meanings as in the Settled Land Act, 1925;

(xxvii) "Term of years absolute" means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest); but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by this Act to take effect within that period (see sect. 149 (3), *ante*); and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

(xxviii) "Trust corporation" means the public trustee or a corporation either appointed by the Court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee;

(xxix) "Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; "trustees for sale" means the persons (including a personal representative) holding land on trust for sale; and "power to postpone a sale" means power to postpone in the exercise of a discretion;

(xxx) "United Kingdom" means Great Britain and Northern Ireland;

(xxxi) "Will" includes codicil.

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the creation of an interest or power include references to any interest or power so arising.

(3) References to registration under the Land Charges Act, 1925,

apply to any registration made under any other statute which is by the Land Charges Act, 1925, to have effect as if the registration had been made under that Act.

Forms of instruments and examples of abstracts.—Forms of instruments are given in the 5th Schedule, which in regard to form and expression will be sufficient. (Sect. **206** (1).)

Examples of abstracts of title framed in accordance with the enactments which will take effect at the commencement of this Act are contained in the 6th Schedule. (Sect. 206 (2).) See the Schedules, *post*.

Repeals.—Sect. **207** repeals the enactments described in the 7th Schedule with the usual savings.

Crown.—The L. P. A. binds the Crown, but is not to render any Crown property subject to distress, nor is it, except as expressly provided, to affect or alter the descent, devolution or tenure or the nature of the estates and interests of or in any land vested in His Majesty. But, after 1925, no estates, interests or charges in or over Crown lands are to be conveyed or created except such as are capable under the Act of subsisting or of being conveyed or created. (P. A. sect. **208**.)

Short title, &c. -Sect. **209** gives the title—the Law of Property Act, 1925—brings the Act into operation on the 1st January, 1926, and confines its extent to England and Wales only.

FIRST SCHEDULE.

Transitional Provisions.

[See *ante*, under sect. 39, pp. 120 *et seq.*]

SECOND SCHEDULE.

Implied Covenants.

[See *ante*, under sects. 76 and 77, pp. 147, 148.]

THIRD SCHEDULE.

Forms of Transfer and Discharge of Mortgages.

Form No. 1.

Form of Transfer of Mortgage.

This Transfer of Mortgage made the day of 19 , between *M.* of [&c.] of the one part and *T.* of [&c.] of the other part, supplemental to a Mortgage dated [&c.], and made between [&c.], and to a Further Charge dated [&c.], and made between [&c.] affecting &c. (*here state short particulars of the mortgaged property*).

Witnesseth that in consideration of the sums of £ and £ (for interest) now paid by *T.* to *M.*, being the respective amounts of the mortgage money and interest owing in respect of the said mortgage and further charge (the receipt of which sums *M.* hereby acknowledges) *M.*, as mortgagee, hereby conveys and transfers to *T.* the benefit of the said mortgage and further charge.

In witness, &c

Form No. 2.

Form of Receipt on Discharge of a Mortgage.

I, *A.B.*, of [&c.] hereby acknowledge that I have this day of 19 , received the sum of £ representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] mortgage [and by a further charge dated, &c., *or otherwise as required*] together with all interest and costs, the payment having been made by *C.D.* of [&c.] and *E.F.* of [&c.].

As witness, &c.

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the mortgage.

FOURTH SCHEDULE.

Forms relating to Statutory Charges or Mortgages of Freehold or Leasehold Land.

Form No. 1.

Statutory Charge by Way of Legal Mortgage.

This Legal Charge made by way of Statutory Mortgage the day of 19 , between *A.* of [&c.] of the one part and *M.* of [&c.] of the other part Witnesseth that in consideration of the sum of now paid to *A.* by *M.* of which sum *A.* hereby acknowledges the receipt *A.* as Mortgagor and as Beneficial Owner hereby charges by way of legal mortgage All That [&c.] with the payment to *M.* on the day of 19 , of the principal sum of £ as the mortgage money with interest thereon at the rate of per centum per annum.

In witness, &c.

Note.—Variations in this and the subsequent forms in this Schedule to be made, if required, for leasehold land or for giving effect to special arrangements. *M.* will be in the same position as if the charge had been effected by a demise of freeholds or a subdemise of leaseholds.

Form No. 2.

Statutory Transfer, Mortgagor not Joining.

This Transfer of Mortgage made by way of statutory transfer the day of 19 , between *M.* of [&c.] of the one part and *T.* [of &c.] of the other part supplemental to a legal charge made by way of statutory mortgage dated [&c.] and made [&c.] Witnesseth that in consideration of the sum of £ now paid to *M.* by *T.* (being the aggregate amount of £ mortgage money and £ interest due in respect of the said legal charge of which sum *M.* hereby acknowledges the receipt) *M.* as Mortgagee hereby conveys and transfers to *T.* the benefit of the said legal charge.

In witness, &c.

Note.—This and the next two forms also apply to a transfer of a statutory mortgage made before the commencement of this Act, which will then be referred to as a mortgage instead of a legal charge.

FORM No. 3.

Statutory Transfer, a Covenantor Joining.

This Transfer of Mortgage made by way of statutory transfer the day of 19 , between *A.* of [&c.] of the first part *B.* of [&c.] of the second part and *C.* of [&c.] of the third part Supplemental to a Legal Charge made by way of statutory mortgage dated [&c.] and made [&c.] Witnesseth that in consideration of the sum of £ now paid by *A.* to *C.* (being the mortgage money due in respect of the said Legal Charge no interest being now due or payable thereon of which sum *A.* hereby acknowledges the receipt) *A.* as Mortgagee with the concurrence of *B.* who joins herein as covenantor hereby conveys and transfers to *C.* the benefit of the said Legal Charge.

In witness, &c.

FORM No. 4.

Statutory Transfer and Mortgage Combined.

This Transfer and Legal Charge is made by way of statutory transfer and mortgage the day of 19 , between *A.* of [&c.] of the first part *B.* of [&c.] of the second part and *C.* of [&c.] of the third part Supplemental to a Legal Charge made by way of statutory mortgage dated [&c.] and made [&c.] Whereas a principal sum of £ only remains due in respect of the said Legal Charge as the mortgage money and no interest is now due thereon And Whereas *B.* is seised in fee simple of the land comprised in the said Legal Charge subject to that Charge.

Now this Deed Witnesseth as follows:—

1. In consideration of the sum of £ now paid to *A.* by *C.* (the receipt and payment of which sum *A.* and *B.* hereby respectively acknowledge)* *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said Legal Charge.

2. For the consideration aforesaid *B.*† as beneficial owner hereby charges by way of legal mortgage All the premises comprised in the said Legal Charge with the payment to *C.* on the day of 19 of‡ the sum of £ as the mortgage money with interest thereon at the rate of per centum per annum In Witness &c. [or in the case of a further advance after "acknowledge" *at * insert* "and of the further sum of £ now paid

by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt" *also at* † *before* "as beneficial owner" *insert* "as mortgagor and" *as well as where B. is not the original mortgagor. And after* "of" *at* ‡ *insert* "the sums of £ and £ making together"].

Note.—Variations to be made, as required, in case of the deed being by indorsement, or in respect of any other thing.

Form No. 5.

Receipt on Discharge of Statutory Legal Charge or Mortgage.

I *A.B.* of [&c.] hereby acknowledge that I have this day of 19 received the sum of £ representing the [aggregate] [balance remaining owing in respect of the] mortgage money secured by the [annexed] within [above] written statutory legal charge [*or* statutory mortgage] [and by the further statutory charge dated &c. *or otherwise as required*] together with all interest and costs the payment having been made by *C.D.* of [&c.] and *E.F.* of [&c.].

As witness &c.

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the statutory legal charge or mortgage.

FIFTH SCHEDULE.

Forms of Instruments.

Form No. 1.

Charge by way of Legal Mortgage.

This Legal Charge is made [&c.] between *A.* of [&c.] of the one part and *B.* of [&c.] of the other part.

[*Recite the title of A. to the freeholds or leaseholds in the Schedule and agreement for the loan by B.*]

Now in consideration of the sum of pounds now paid by *B.* to *A.* (the receipt &c.) this Deed witnesseth as follows:—

1. *A.* hereby covenants with *B.* to pay [*Add the requisite covenant to pay principal and interest*].

2. *A.* as Beneficial Owner hereby charges by way of legal mortgage All and Singular the property mentioned in the Schedule hereto with the payment to *B.* of the principal money, interest, and other money hereby covenanted to be paid by *A.*

3. [*Add covenant to insure buildings and any other provisions desired.*]

In witness [&c.] [*Add Schedule*].

Note.—*B.* will be in the same position as if a mortgage had been effected by a demise of freeholds or a subdemise of leaseholds.

FORM NO. 2.

Further Charge by way of Legal Mortgage.

This Further Charge made [&c.] between [&c.] [*same parties as foregoing legal charge*] Supplemental to a Legal Charge (hereinafter called the Principal Deed) dated [&c.] and made between the same parties as are parties hereto and in the same order for securing the sum of £ and interest at per centum per annum on [freehold] [leasehold] land at [&c.].

Witnesseth as follows:—

1. In consideration of the further sum of now paid to *A.* by *B.* [*add receipt and covenant to pay the further advance and interest*].

2. For the consideration aforesaid *A.* as Beneficial Owner hereby charges by way of legal mortgage the premises comprised in the Principal Deed with the payment to *B.* of the principal money and interest hereinbefore covenanted to be paid as well as the principal money, interest, and other money secured by the Principal Deed.

In witness [&c.].

FORM NO. 3.

Conveyance on Sale, Legal Chargees or Mortgagees concurring.

This Conveyance is made [&c.] between *A.* of [&c.] (hereinafter called the Vendor) of the first part *B.* of [&c.] and *C.* of [&c.] (hereinafter called the Mortgagees) of the second part and *D.* of [&c.] (hereinafter called the Purchaser) of the third part [*Recite the Charge by way of legal mortgage, the state of the debt, the agreement for sale and for the mortgagees to concur*].

Now in the consideration of the sum of £ paid by the Purchaser by the direction of the Vendor to the Mortgagees (*the receipt &c.*) and of the sum of £ paid by the Purchaser to the Vendor (*the receipt &c.*) this Deed witnesseth as follows:—

1. The Vendor as Beneficial Owner hereby conveys and the Mortgagees as Mortgagees hereby [surrender and] release unto the Purchaser All That &c.

To Hold unto the Purchaser [in fee simple] discharged from all claims under the recited Legal Charge [Mortgage and to the intent that the term subsisting thereunder shall as respects the premises conveyed merge and be extinguished].

2. [*Add any necessary acknowledgments and undertakings with respect to documents not handed over which relate to the title and any other special provisions.*]

In witness &c.

FORM No. 4.

Conveyance on Sale by Legal Chargees or Mortgagees.

This Conveyance is made [&c.] between *A.* of [&c.] and *B.* of [&c.] (hereinafter called the Vendors) of the one part and *C.* of [&c.] (hereinafter called the Purchaser) of the other part [*Recite the Legal Charge or the Mortgage, with or without a deed converting the Mortgage into a legal charge and the agreement for sale*].

Now in consideration of the sum of £ paid by the Purchaser to the Vendors (the receipt &c.) this Deed witnesseth as follows:—

1. The Vendors as Mortgagees in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers hereby convey unto the Purchaser All Those &c.

To Hold unto the Purchaser [in fee simple] discharged from all right of redemption and claims under the recited Legal Charge [Mortgage].

2. [*Add any necessary acknowledgments as to documents retained and any other special provisions.*]

In witness &c.

FORM No. 5.

Conveyance by Personal Representatives of a Fee Simple reserving thereout a Term of Years absolute for giving Legal Effect to a Mortgage.

This Conveyance is made [&c.] between *James Cook* of [&c.] and *Harry Cook* of [&c.] of the first part, *L.* of [&c.] and *M.* of [&c.] of the second part, and *Thomas Wilson* of [&c.] of the third part.

Whereas on the first day of October 1927 Letters of Administration to the real and personal estate of *Henry Wilson*, late of [&c.], who died [&c.], were granted by the principal probate registry to *James Cook* and *Harry Cook*.

And whereas *Henry Wilson* was at his death solely entitled to the hereditaments hereinafter conveyed for an estate in fee simple.

Now this Deed witnesseth that *James Cook* and *Harry Cook*, as Personal Representatives of the said *Henry Wilson* deceased, hereby convey unto the said *Thomas Wilson*.

All that [&c.].

Reserving out of the premises nevertheless unto *L.* and *M.* a term of eight hundred years, without impeachment of waste, to commence from the date hereof but subject to cesser on redemption by *Thomas Wilson* under a Mortgage dated [&c.] and made between [&c.] on payment of the sum of five thousand pounds, and interest thereon at the rate of five pounds per centum per annum.

To hold the premises subject to the said term unto *Thomas Wilson* [in fee simple].

In witness [&c.].

Note.—The reservation will be valid at law, though the deed may not be executed by *Thomas Wilson*.

FORM No. 6.

Conveyance on Sale reserving Minerals and Right to Work and a Perpetual Rent-charge.

This Conveyance made [&c.] between *A.* of [&c.] of the one part and *B.* of [&c.] of the other part.

Witnesseth that in consideration of the sum of pounds now paid by *B.* to *A.* (the receipt, &c.) and of the rent-charge hereinafter reserved *A.* as Beneficial Owner hereby conveys unto *B.*

All those [&c.] except and reserving unto *A.* in fee simple all mines and minerals Together with full power to work [&c.]

To hold (except and reserved as aforesaid) unto *B.* in fee simple reserving out of the premises to *A.* in fee simple a perpetual yearly rent-charge of pounds, to be for ever charged upon and issuing out of the premises hereby conveyed clear of all deductions (except landlord's property tax), and payable by equal half-yearly payments on [&c.], the first payment to be made on [&c.]

And *B.* hereby covenants with *A.*, and the persons deriving title under him to pay [&c.]

In witness [&c.].

Note.—The reservations will be valid at law even if the deed is not executed by *B.*

FORM No. 7.

Deed for confirming Legal Estates which have not been validly created.

To All to whom this Further Assurance shall come *A.B.* of &c. sends greeting this day of 19 .

[*Recite the invalid dealings, giving short particulars in schedules of the Conveyances, Grants and Leases which purport to transfer or create legal estates, that A.B. is entitled in fee simple or for a term of years absolute in the land affected and desires to confirm the dealings.*]

Now these presents witness and the said *A.B.* hereby declares that his legal estate in the premises affected to which he is entitled as aforesaid shall go and devolve in such manner as may be requisite for legally confirming the interests capable of subsisting as legal estates expressed to have been transferred or created by the documents mentioned in the schedules hereto or any of those documents and any dealings with the interests so confirmed which would have been legal if those interests had in the first instance been validly transferred or created:

Provided always that subject to such confirmation of interests and dealings nothing herein contained shall affect the legal estate of the said *A.B.* in the premises.

In witness, &c. [*Add Schedules.*]

Note.—This form takes the place of a conveyance to uses for confirming past transactions and is applicable to a term of years absolute as well as a fee simple.

FORM No. 8.

Assent by Personal Representative in Favour of a Person absolutely entitled free from Incumbrances.

I, *A.B.*, of [&c.] as the personal representative of *X. Y.*, late of [&c.] deceased, do this day of 19 hereby, As Personal Representative, assent to the vesting in *C.D.* of [&c.] of [All that farm &c.] *or* [All the property described in the Schedule hereto] for all the estate or interest of the said *X.Y.* at the time of his death [*or*, for an estate in fee simple].

As witness, &c.

Note.—The expression "conveyance" includes an assent, but an assent will relate back to the death unless a contrary intention appears. An assent may be properly given though duties remain to be paid if the personal representative is satisfied in regard to the arrangements made for payment.

FORM No. 9.

Assent by Personal Representatives in Favour of Trustees for Sale.

We, *A.B.*, of [&c.] and *C.D.*, of [&c.] as the Personal Representatives of *X.Y.*, late of [&c.] deceased do this day of 19 hereby:—

1. As Personal Representatives assent to the vesting in [ourselves *or*] *T.A.* of [&c.] and *T.B.* of [&c.] of All Those &c. To Hold unto [ourselves *or*] the said *T.A.* and *T.B.* in fee simple Upon trust to sell the same or any part thereof with full power to postpone the sale and to stand possessed of the net proceeds of sale and other money applicable as capital and the net rents and profits until sale upon the trusts respectively declared concerning the same [*or* the proceeds of sale and the rents and profits of certain property at] by the Will dated [&c.] of [&c.] [*or* by the Settlement dated &c. *or otherwise as the case may require*].

2. And declare that *F.* of [&c.] and *M.* of [&c.] during their joint lives and the survivor of them during his or her life have or has power to appoint new trustees of this Assent [*or* "that the statutory power to appoint new trustees applies to this Assent" *or otherwise as the case requires to correspond with the power applicable to the Will or Settlement*].

As witness &c.

SIXTH SCHEDULE.

Section 206.

EPITOMES OF ABSTRACTS OF TITLE.

SPECIMEN No. 1.

OF THE TITLE OF JOHN WILLIAMS TO BLACKACRE.

Where the Title commences before the Commencement of this Act.

The italics show how the abstract is to be framed and what documents are to be abstracted. After the commencement of this Act, the parts not in italics may be ignored.

10th June 1897. *Will of H. Jones, appointing Maria Jones and W. Jones executors and Settled Land Act trustees.*

Devises, Blackacre.

To the use that Maria Jones may receive a yearly rentcharge of five hundred pounds for her life, and, subject thereto,

To the use of W. Jones for life with remainder.

To the use of *X.* and *Y.*, for a term of one thousand years, and subject thereto,

To the use of the first and other sons of W. Jones in tail with remainders over.

Trusts of term of one thousand years declared for raising ten thousand pounds for portions for younger children of W. Jones, as he shall appoint, and in default equally.

Hotchpot Clause. Power to appoint new trustees.

4th June 1898. *Death of H. Jones.*

1st August 1898. *Will of H. Jones proved.*

[NOTE.—After the execution of the Vesting Deed the will only takes effect in equity and can be withdrawn from the abstract when not required as a root of title.]

20th August 1899. *Conveyance by the executors to the uses of the Will.*

2nd September 1915. *Appointment of R. and S. to be Settled Land Act trustees of the will in place of Maria Jones and W. Jones who retire.*

The Settled Land and Law of Property Acts, 1925, come into operation.	1st January 1926.
[NOTE.—The legal estate in fee simple will vest in W. Jones in fee simple, but he cannot deal with it till the vesting deed is executed.]	
Deed by the Settled Land Act trustees declaring the fee simple is vested in W. Jones on the trusts of the Will and stating that they are the trustees of the settlement.	20th January 1926.
Appointment by W. Jones of five thousand pounds, part of the ten thousand pounds, to his daughter, Ann Jones.	2nd February 1926.
Assignment by Ann Jones of her five thousand pounds, part of the ten thousand pounds raisable for portions, to trustees *F.* and *G.* on her marriage to J. Robinson.	3rd February 1926.
Will of W. Jones, appointing T. Brooks his executor.	4th February 1926.
Death of W. Jones leaving three children, Frederick Jones, his eldest son, and E. Jones and Ann Robinson.	6th March 1926.
Disentail by Frederick Jones in trust for himself in fee simple.	2nd April 1926.
Will of W. Jones proved by R. and S. in regard to the settled land.	3rd May 1926.
Mortgage by E. Jones of his one-half of the ten thousand pounds to *K.*	6th June 1926.
Death of Maria Jones, jointress.	1st December 1926.
Release by *F.* and *G.* on payment to them of the five thousand pounds of Ann Robinson.	2nd January 1927.
Release by E. Jones and *K.*, his mortgagee, of the five thousand pounds raisable for E. Jones.	Same date.
Assent by R. and S., as personal representatives to Frederick Jones in fee, without nominating Settled Land Act trustees.	3rd January 1927.
[NOTE.—If the Assent had been made before the family charges had been cleared, the personal representatives would have nominated themselves as being the trustees of the settlement, and a discharge from them would have been required when the charges were cleared.]	

6th February 1927. *Mortgage either by charge by way of legal mortgage or for a term of one thousand years by Frederick Jones to the Estate Trustees of the C. Assurance Society to secure five thousand pounds and interest.*

20th March 1927. Second mortgage either by charge by way of legal mortgage or for a term of two thousand years by Frederick Jones to *D.*, to secure three thousand pounds and interest.

1st June 1927. Third mortgage either by charge by way of legal mortgage or for a term of three thousand years by Frederick Jones to *E.*, to secure two thousand pounds and interest.

8th August 1927. Conveyance by Frederick Jones on his marriage (subject to above mortgages) to *M.* and *N.* upon trust for sale, the proceeds of sale being settled by a deed of even date.

12th November 1927. Death of *M.*

20th December 1927. Appointment of *F.* as trustee of the conveyance on trust for sale in the place of *M.*, and jointly with *N.*

10th June 1928. *Conveyance by the then Estate Trustees of the C. Assurance Society, under their power of sale as first mortgagees, to John Williams in fee.*

[NOTE.—The title being made under the power of sale of the Estate Trustees, the fee simple passes and not merely the mortgage term. They can if desired convey the fee in the names of *M.* and *N.* It is unnecessary to disclose the second and third mortgages or the conveyance on trust for sale. It would have been necessary to disclose them if title had been made by the trustees for sale, as the mortgages and the conveyance all dealt with legal estates. The right to vest the debt and mortgaged property in Estate Trustees by memorial enrolled under a Private Act is preserved.

No evidence of deaths, births, &c., is required. Probate of the will of H. Jones is conveyancing evidence of his death.]

12th January 1929. John Williams leaves Great Britain and Northern Ireland is believed to be alive but cannot be found.

Private Act passed authorising the X. Company to acquire Blackacre under compulsory powers.	10th August 1929.
Statutory declaration as to facts known with reference to John Williams.	15th June 1930.
Deed Poll by X. Company (who by their agent also execute in the name of John Williams) under section seventy-seven of the Lands Clauses Consolidation Act, 1845, vesting the land in themselves.	16th June 1930.

[NOTE.—This is an example of an exercise of a power over a legal estate the operation of which is expressly preserved.]

SPECIMEN No. 2.

OF THE TITLE OF THE TRUSTEES OF FRANK SMITHERS TO GREENACRE.

Relating to undivided Shares.

Mortgage by James Smith of Greenacre to M. Coy., Ltd., in fee to secure 1,000l. and interest.	2nd January 1910.
Will of James Smith devising Greenacre to his ten children named therein in equal shares and appointing E. to be his executor.	4th February 1910.
Death of James Smith, leaving the ten children surviving.	1st March 1910.
Probate by E.	3rd April 1910.
Assent by E. to the devise to the ten children.	4th December 1910.
Mortgage by one of the sons of his tenth share.	5th January 1911.
Conveyance by one of the daughters on her marriage of a tenth share to trustees on trust for sale, the net proceeds to be held on the trusts of her settlement of even date.	15th April 1911.
Settlement by another of the sons of his tenth share and appointing Settled Land Act trustees.	20th May 1911.
Will of another daughter devising her tenth to her husband and appointing him executor.	8th June 1913.

20th June 1913. Death of the testatrix.

4th August 1913. Probate by her husband.

2nd May 1918. Death of another son intestate.

30th July 1918. Letters of administration granted to two of his brothers.

1st January 1926. The Law of Property Act, 1925, comes into operation and vests Greenacre, subject only to the mortgage of 1910 affecting the entirety (which is converted into a mortgage for a term of three thousand years), in the Public Trustee, pending the appointment of new trustees, on trust for sale.

4th June 1926. *Order of the Court (Chancery Division) made on the application of persons entitled to six tenths, appointing M. and N. to be trustees of the trust affecting Greenacre in place of the Public Trustee.*

7th May 1927. *Conveyance on sale to Walter Robinson by M. and N., the M. Company, Limited, being paid off out of part of the purchase money, and joining to surrender the three thousand years' term.*

[NOTE.—The balance of the purchase money is available in the hands of the trustees to answer the claims of the mortgagee and other persons interested in undivided shares.]

4th June 1927. Will of Walter Robinson devising and bequeathing Greenacre and his residuary real and personal estate to *X.* and *Y.* upon trust for his son John Robinson for life with remainder upon trust for his first and other sons successively according to seniority in tail male with remainder upon trust for the same sons in tail general with remainder upon trust for all the daughters of John Robinson as tenants in common in tail with cross remainders in tail between them in equal shares. Appointment of *X.* and *Y.* to be executors and Settled Land Act trustees.

1st December 1927. Death of testator.

20th April 1928. *Probate by X. and Y.*

Assent by X. and Y. vesting the settled land in John Robinson upon the trusts of the will of Walter Robinson, and stating that they are the trustees of the settlement. — 3rd May 1928.

Will of John Robinson appointing his daughters Mary Robinson and Jane Robinson his executors. — 14th July 1928.

Death of John Robinson without having had a son and leaving five daughters. — 16th March 1930.

Probate by X. and Y. in regard to the settled land. — 12th June 1930.

Assent by X. and Y. to the vesting of the settled land in themselves on trust for sale, the net proceeds to be held on the trusts of the will of Walter Robinson. — 25th July 1930.

Conveyance on sale by X. and Y. of Greenacre to Frank Smithers in fee. — 7th January 1931.

Equitable charge by Frank Smithers to James Montagu by way of indemnity and agreement to vest Greenacre in a trust corporation on trust for sale to raise the money when the amount is ascertained and for other purposes. — 8th January 1931.

[NOTE.—A mere equitable charge not secured by deposit of documents can be overridden when the land is made subject to a trust for sale without joining the chargee.]

Lease by Frank Smithers of part of Greenacre to his wife for life at a rent. — 9th January 1932.

[NOTE.—A lease for life is made to take effect as a demise for a term of ninety years determinable by notice after the death of the lessee by his representatives or by the lessor.]

Conveyance by Frank Smithers, of Greenacre, to a trust corporation on trust for sale subject to the lease. The net proceeds to be held on the trusts of a deed of even date, under which effect is given to the Agreement of 1931. — 23rd June 1933.

Specimen No. 3.

Of the Title of R. Horne to Whiteacre.

Where the Title commences after the Commencement of this Act.

4th July 1926. *Settlement by John Wilson, being a deed declaring that Whiteacre is vested in himself in fee upon the trusts of a deed of even date.*

Appointment of R. and S. to be trustees for the purposes of the Settled Land Act, 1925.

Provisions extending the powers conferred by the Settled Land Act, so far as they relate to dealings with land, and giving power for John Wilson during his life to appoint new trustees.

Same date. Trust instrument.

Trusts declared for John Wilson for life, with remainder.

Upon trust that Elizabeth Wilson, if she survives him, shall have a rent-charge of 200*l.* during the residue of her life, and subject thereto.

Upon trust for *R.* and *S.* for a term of five hundred years to raise five thousand pounds portions for younger children of John Wilson, with remainder.

Upon trust for Henry Wilson for life, with remainder.

Upon trust for *H.* and *K.* for a term of one thousand years to raise five thousand pounds portions for younger children of Henry Wilson, with remainder.

Upon trust for the first and other sons of Henry Wilson successively in tail, with further remainders over. Appointment of *R.* and *S.* to be Settled Land Act trustees. Extension of Settled Land Act powers by reference to the Vesting Deed of even date or otherwise. Power for tenant for life of full age to appoint new trustees.

4th September 1926. Appointment of new trustee of the Trust Instrument and of the five hundred years' term.

Recites that *S.* is incapable of acting. Appointment by John Wilson of *P.* to be trustee of the term of five hundred years and for the purposes of the Trust Deed in the place of *S.* and jointly with *R.* Declaration (express or implied) vesting the equitable term of five hundred years in *R.* and *P.*

Deed stating that R. and P. are the trustees of the settlement. Memorandum of the deed endorsed on the Vesting Deed. Same date.

Will of John Wilson appointing Isaac James and Joseph James executors. 7th January 1927.

Death of John Wilson, leaving younger children and his widow. 3rd September 1927.

Will of John Wilson proved by R. and P. in regard to the settled land. 4th April 1928.

Assignment by *R.* and *P.* to *B.* of term of five hundred years by way of mortgage for securing five thousand pounds and interest. 1st October 1928.

[NOTE.—As money has been raised on the term the mortgagee could call on the executors to create a legal term for securing it in priority to the settlement.]

Assent by R. and P., as personal representatives, to the vesting of the settled land in Henry Wilson in fee upon the trusts of the Trust Deed. 2nd December 1928.

Statement that R. and P. are the trustees of the settlement. Power for Henry Wilson during his life to appoint new trustees.

The same provisions for extending powers conferred by the Settled Land Acts as are contained in the Vesting Deed.

[NOTE.—These may be inserted either expressly, if short, or by reference to the former Vesting Deed, if long.]

Appointment of James Cook and Harry Cook to be trustees of the Trust Deed. 2nd June 1929.

2nd June 1929. *Deed stating that they are the trustees of the settlement. Endorsement of notice on the Vesting Deed.*

4th November 1929. Transfer of the mortgage for five thousand pounds by *B.* to *C.*

10th July 1930. Death of Henry Wilson, leaving Thomas Wilson, his eldest son, and two younger children.

1st October 1930. *Letters of Administration to the settled land of Henry Wilson granted to James Cook and Harry Cook.*

3rd November 1930. Disentail by Thomas Wilson.

4th November 1930. Release by *C.* on payment off of his mortgage debt of five thousand pounds and surrender of the equitable term of five hundred years.

10th November 1930. Death of Elizabeth Wilson.

[NOTE.—Though her jointure took effect in equity only she has power to create a term of years absolute for raising arrears of the jointure, and the estate owner would be bound to give legal effect to a mortgage of the term.]

20th November 1930. Release by two younger children of Henry Wilson of their portions.

Same date. Demise by Thomas Wilson to *L.* and *M.* for an equitable term of eight hundred years, subject to cesser on payment of five thousand pounds and interest.

Same date. *Demise by James Cook and Harry Cook to L. and M. for the term of eight hundred years, subject to cesser on redemption or charge by way of legal mortgage.*

Same date. 20th November 1930. *Assent by them to the vesting of the settled land, subject to the term or legal charge, in Thomas Wilson in fee, without nominating Settled Land Act trustees.*

10th March 1931. *Conveyance by Thomas Wilson and L. and M. to R. Horne in fee.*

Specimen No. 4.

Of the Title of the Administrators of M. Curtis to Rich and Middle Farms.

Relating to Infants.

Will of James Wilcox devising Rich Farm and Middle Farm to the use of his elder son John Wilcox (an infant) for his life with remainders over for the issue of John Wilcox which failed with remainder to the use of his younger son Gilbert Wilcox (an infant) for his life with remainders over. Appointment of *X.* and *Y.* to be executors and Settled Land Act trustees.	2nd January 1922.
Death of testator, leaving his two sons, giving dates of their births.	4th February 1922.
Probate by X. and Y.	12th May 1922.
Assent to the devise, John Wilcox being still an infant.	15th December 1922.
The Settled Land Act, 1925, and The Law of Property Act, 1925, come into force and vest the settled land in *X.* and *Y.* as Settled Land Act trustees by reason of John Wilcox being an infant.	1st January 1926.
Instrument declaring that the settled land is vested in X. and Y.	4th January 1926.
Death of John Wilcox a bachelor and an infant.	3rd June 1926.
Conveyance on sale of Rich Farm by X. and Y. to M. Curtis.	29th September 1926.
Conveyance by X. and Y. vesting Middle Farm in Gilbert Wilcox (who had attained full age) on the trusts of the will of James Wilcox with a statement that they are the trustees of the settlement.	12th October 1927.
Conveyance on sale of Middle Farm by Gilbert Wilcox to M. Curtis, X. and Y. joining to receive the purchase money.	10th November 1927.
Will of M. Curtis purporting to appoint his infant son John Curtis executor.	1st February 1928.

3rd April 1928. Death of M. Curtis.

5th September 1928. *Letters of administration with the will annexed to M. and N.*

[NOTE.—Administration will either be granted to a trust Corporation or to not less than two individuals; if there are Settled Land Act trustees, it will as respects the settled land, be granted to them.]

SPECIMEN No. 5.

OF THE TITLE OF GEORGE SMITH TO HOUSES IN JOHN STREET.

Relating to Leasehold Property.

25th March 1921. *Lease by Charles Robinson to Henry Chubb, of* 10 *to* 16 *(even numbers) John Street, in the city of X., for* 99 *years from date at a yearly rent of* 5*l. for each house.*

26th March 1921. *First Mortgage (by subdemise) by Henry Chubb to A. for the residue of the term less* 3 *days for securing* 3,000*l. and interest. Declaration by Henry Chubb that he holds the head term in trust for A. subject to redemption.*

Same date. *Second Mortgage (by subdemise) to B. for the residue of the term less* 2 *days for securing* 1,000*l. and interest. Declaration by Henry Chubb that (subject to the First Mortgage) he holds the head term in trust for B. subject to redemption.*

Same date. Third Mortgage (by subdemise) to *C.* for residue of term less 1 day for securing 500*l.* and interest.

24th December 1924. *Transfer of First Mortgage by A. to T. in trust for Henry Chubb, who pays off the First Mortgage debt.*

1st January 1926. The Law of Property Act, 1925, comes into operation.

[NOTE.—It extinguishes the first mortgage term, because Henry Chubb was not entitled to keep it alive to the prejudice of his mesne incumbrancers.]

Order of Court directing Henry Chubb to hand over the Lease, First Mortgage, and Transfer of that Mortgage to *B.* — 1st July 1926.

Assignment on sale by B., under his power, to George Smith. — 20th July 1926.

[NOTE.—This conveys the head term created by the Lease and extinguishes all the mortgage terms. The head term may, if desired, be conveyed in the name of Henry Chubb.]

SEVENTH SCHEDULE.

ENACTMENTS REPEALED.

[See Table of Repeals, *ante*, p. xiii.]

SETTLED LAND ACT, 1925.

PART II. of L. P. A. 1922, and the 10th Schedule to that Act contained numerous amendments of the Settled Land Acts, 1882 to 1890. Some of these were consequential on the alterations made in the general law by other Parts of the Act, *e.g.*, the exclusion from the Acts of settlements on trusts for sale, the statutory powers being given by Part I. to the trustees of the settlement, and the elimination of all reference to undivided shares. Others were intended to carry out the principal object of the Act, which was to simplify conveyancing, *e.g.*, the additional powers to deal with land, the extension of the class of persons within the Acts, the removal of difficulties connected with compound and referential settlements or the appointment of trustees for the purposes of the Acts. The rest, such as the provisions relating to improvements and the application of capital money, had nothing to do with the new scheme of conveyancing; they were amendments which thirty-nine years of experience had shown to be desirable.

All these amendments are now incorporated in the Settled Land Act, 1925, which consolidates the Acts. The effect of the amendments is, even more than before, to put a limited owner practically on the same footing as an absolute owner, subject to proper safeguards being provided for the other persons interested.

The Act also incorporates the provisions as to settlements contained in L. P. A. 1922 and 1924, which have already been explained. (*Ante*, p. 22.)

This Act, containing 120 sections and 5 Schedules, is arranged as follows:—

Part I.—General Preliminary Provisions. (Sects. 1 to 37.)

Part II.—Powers of a Tenant for Life. (Sects. 38 to 72.)

Part III.—Investment or other application of Capital Money. (Sects. 73 to 82.)

Part IV.—Improvements. (Sects. 83 to 89.)

Part V.—Miscellaneous Provisions. (Sects. 90 to 93.)

Part VI.—General Provisions as to Trustees. (Sects. 94 to 102.)

Part VII.—Restrictions, Savings and Protection of Purchasers. (Sects. 103 to 112.)
Part VIII.—Court, Ministry of Agriculture and Fisheries, Procedure. (Sects. 113 to 116.)
Part IX.—Supplementary Provisions. (Sects. 117 to 120.)

SCHEDULES.

Schedule I.—Forms of Instruments.
Schedule II.—Transitional provisions affecting existing settlements.
Schedule III.—Improvements.
Schedule IV.—Retrospective amendments of the Settled Land Acts, 1882 to 1890.
Schedule V.—Enactments repealed.

PART I.

GENERAL PRELIMINARY PROVISIONS. (Sects. 1 to 37.)
SETTLEMENTS AND SETTLED LAND. (Sects. 1 to 15.)

What constitutes a settlement.—Sect. **1** replaces sect. 1 (1) and (2) of S. L. A. 1882. It has been entirely redrafted so as to bring it into line with the provisions of L. P. A. It runs as follows:—

"(1) Any deed, will, agreement for a settlement, or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, after the commencement of this Act, stands for the time being—

"(i) limited in trust for any persons by way of succession; or

"(ii) limited in trust for any person in possession—

"(a) for an entailed interest whether or not capable of being barred or defeated;

"(b) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;

"(c) for a base or determinable fee or any corresponding interest in leasehold land;

"(d) being an infant, for an estate in fee simple or for a term of years absolute; or

"(iii) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event; or

"(iv) limited to or in trust for a married woman of full age in possession for an estate in fee simple or a term of years absolute or any other interest with a restraint on anticipation; or

"(v) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rent-charge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons with or without any term of years for securing or raising the same;

creates or is for the purposes of this Act a settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires:

"Provided that where land is the subject of a compound settlement, references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

"(2) Where an infant is beneficially entitled to land for an estate in fee simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement shall be deemed to have been made by the intestate, or by the person whose interest the infant has acquired.

"(3) An infant shall be deemed to be entitled in possession notwithstanding any subsisting right of dower (not assigned by metes and bounds) affecting the land; and such a right of dower shall be deemed to be an interest comprised in the subject of the settlement and coming to the dowress under or by virtue of the settlement.

"Where dower has been assigned by metes and bounds the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be deemed a settlement made by the husband.

"(4) An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest

comprised in the subject of the settlement, and coming to the settlor or such person under or by virtue of the settlement.

"(5) Where—

"(a) a settlement creates an entailed interest which is incapable of being barred or defeated, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land; or

"(b) the subject of a settlement is an entailed interest, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land;

the reversion or right of reverter upon the cesser of the interest so created or settled shall be deemed to be an interest comprised in the subject of the settlement, and limited by the settlement.

"(6) Sub-sections (4) and (5) of this section bind the Crown."

The most noteworthy points on this section are:—

(1) It is confined to limitations in trust. This is because the legal estate cannot, after 1925, be split up into successive interests. (L. P. A. s. 1, *ante*.) (2) The provision as to married women is new. It was held, in *Bates* v. *Kesterton*, (1896) 1 Ch. 519, that a restraint on anticipation attached to a fee simple did not create a settlement. Hitherto, therefore, a married woman entitled in fee simple subject to restraint has had to obtain an order of the Court to enable her to make a title to a purchaser. An order will be unnecessary after 1925. (3) Paragraphs (iii) and (v) appear to be new. The latter seems to bring within the Act any land which is subject to a rent-charge for life or years or charged with the payment of certain capital or annual sums. (3) The clauses about an infant are new. An infant's land was treated as settled land under S. L. A. 1882, s. 59, provided his interest was in possession. After 1925 he will be treated as being entitled in possession even though there is a subsisting claim to dower, not assigned by metes and bounds, so that a title can be made free from the widow's rights. This, of course, is only important where the husband died before 1926. After 1925 there will be no dower. (A. E. A. s. 45, *post*.)

What is settled land.—There is nothing new in sect. **2**, which replaces sect. 2 (3) of S. L. A. 1882. Settled land is land which is or is deemed to be the subject of a settlement.

Duration of settlements.—Land which has been subject to a settlement is deemed to be settled land so long as (a) any limitation, charge or power of charging under the settlement subsists, or is capable of being exercised; or (b) the person who, if of full age, would be entitled as beneficial owner to have that land vested in him for a legal estate, is an infant. (Sect. **3.**) This alters the law of sect. 2 (4) of S. L. A. 1882, which provided that the determination of the question whether land is settled land or not was governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

Authorised method of settling land inter vivos.—The next few sections are of very great importance, as they introduce a new method of settling a legal estate in land in strict settlement. By sect. **4,** when the settlement is made *inter vivos* after 1925 there will have to be two instruments instead of one, just as there are nowadays when a settlement is made on trust for sale. The vesting of the legal estate in the person who has the S. L. A. powers—usually the tenant for life as defined by sect. 19, *post*—will be effected by one instrument called "the vesting deed," and the trusts will be declared by a separate instrument called "the trust instrument." The object is to simplify the task of investigating title on a disposition of settled land. The section runs as follows:—

"(1) Every settlement of a legal estate in land *inter vivos* shall, save as in this Act otherwise provided (see sect. 9, *infra*), be effected by two deeds, namely, a vesting deed and a trust instrument and if made in any other way shall not operate to transfer or create a legal estate.

"(2) By the vesting deed the land shall be conveyed to the tenant for life or statutory owner (see sect. 117 (xxvi), *post*) (and if more than one as joint tenants) for the legal estate the subject of the intended settlement:

"Provided that, where such legal estate is already vested in the tenant for life or statutory owner, it shall be sufficient, without any other conveyance, if the vesting deed declares that the land is vested in him for that estate.

"(3) The trust instrument shall—

"(a) declare the trusts affecting the settled land;

"(b) appoint or constitute trustees of the settlement;

"(c) contain the power, if any, to appoint new trustees of the settlement;

"(d) set out, either expressly or by reference, any powers intended to be conferred by the settlement in extension of those conferred by this Act;

"(e) bear any *ad valorem* stamp duty which may be payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement."

[For a form of trust instrument, see 1st Sched., Form No. 3, *post*, p. 287.]

Contents of vesting deeds.—Sect. **5** provides as follows:—

"(1) Every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner (see sect. 117 (xxvi), *post*) during the subsistence of the settlement (in this Act referred to as a "principal vesting deed") shall contain the following statements and particulars, namely:—

"(a) A description, either specific or general, of the settled land;

"(b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land;

"(c) The names of the persons who are the trustees of the settlement;

"(d) Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life;

"(e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.

"(2) The statements or particulars required by this paragraph may be incorporated by reference to an existing vesting instrument, and, where there is a settlement subsisting at the commencement of this Act, by reference to such settlement, and to any instrument whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a trust instrument nor by reference to a disentailing deed.

"(3) A principal vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein."

[For a form of vesting deed, see Form No. 2 in 1st Sched., *post*, p. 287. As regards sub-sect. (2), cp. the second note in Specimen No. 3 of Epitomes of Abstracts of Title in 6th Sched. of L. P. A., *ante*.]

Settlement by will.—Where the settlement is created by the will of an estate owner, *i.e.*, the owner of a legal estate (L. P. A. s. 1 (4), *ante*), who dies after 1925, his will is treated as a trust instrument (sect. **6**), and, when his executors or administrators have finished their work of administration and are satisfied with the provision made for payment of death duties (sect. 8 (3)), they must convey the land on request to the tenant for life or statutory owner, and, if more than one, as joint tenants (sect. 6). The conveyance may be made by deed or assent. (See sect. 8, *post*.) Special provisions to meet the case of the person entitled being an infant are made by sect. 26, *post*.

Procedure on change of ownership.—Although the person entitled to possession of land may be only a limited owner, yet the whole legal fee simple, or, in the case of leaseholds, the entire legal term, is vested in him provided he is of full age. That being so, the Act has to make provision for the destination of his legal estate when his beneficial ownership comes to an end; and this is done by sect. **7**. The section deals with several cases:—

(1) Death of tenant for life.—On the death of a sole or surviving tenant for life—which expression includes most persons whose beneficial interest is limited only (see sect. 20, *post*)—or of a sole or surviving statutory owner (see sect. 117 (xxvi) *post*), the land vests in his personal representatives, who will usually be the trustees of the settlement acting as special representatives for the settled land. (See A. E. A. ss. 10, 22 and 23, *post*.) If the land at the death is still settled land (see sect. 3, *ante*), the personal representatives must convey it on request to the next tenant for life or statutory owner, and, if more than one, as joint tenants. (Sect. 7 (1).) But if the settlement is at an end and there is a person of full age absolutely entitled, the personal representatives must convey to him on request. (Sect. 7 (5).) This

is subject to the saving of their rights as personal representatives mentioned in the next section.

(2) Infant attaining majority.—An infant, it will be remembered, cannot be an estate owner. During his minority the legal estate will be vested in the trustees of the settlement or personal representatives—who are then called the "statutory owner"—or, if he is one of two or more joint tenants, in the other or others of full age. (Sect. 19, *post*.) But when he, by reason of attaining full age, becomes a tenant for life for the purposes of the Act, he will be entitled to require a conveyance of the land (sect. 7 (2)), but naturally, if he is only jointly entitled with another person or other persons, he can only require the land to be vested in himself and the other person or persons as joint tenants. (Sect. 7 (3).)

(3) Forfeiture, &c. of life estate.—If by reason of forfeiture, surrender, or otherwise, the estate owner ceases to have the statutory powers of a tenant for life, and the land remains settled land, he must forthwith convey the land to the person who becomes the tenant for life or statutory owner, and, if more than one, as joint tenants. (Sect. 7 (4).)

(4) Person becoming absolutely entitled.—If any person of full age becomes absolutely entitled to the land (whether beneficially, or as personal representative, or as trustee for sale, or otherwise) free from all limitations, powers, and charges taking effect under the settlement, he can require the persons in whom the land is vested to convey it to him. If more persons than one of full age become so entitled the conveyance will be to them as joint tenants. (Sect. 7 (5).)

General provisions applicable to sects. 6 and 7.—Sect. 8 contains some provisions applicable only to the last two preceding sections.

(1) A conveyance by personal representatives may be made by an assent in writing signed by them. (See Form No. 5 in 1st Sched., *post*, p. 289.)

(2) Every conveyance is to be made at the cost of the trust estate.

(3) The obligations to convey settled land are subject and without prejudice—

(a) where the settlement is created by a will, to the rights and powers of the personal representatives for purposes of administration; and

(b) in any case to the person on whom the obligation is imposed being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest therein for which he is accountable (see L. P. A. s. 16 (1), *ante*), and any interest and costs in respect of such duties, or that he is otherwise effectually indemnified against such duties, interest and costs.

(4) Where the land is or remains settled land a conveyance will—

(a) if by deed, be a principal vesting deed; and

(b) if by an assent, be a vesting assent, which must contain the like statements and particulars as are required in the case of a principal vesting deed. (See sect. 5, *ante*.)

(5) Nothing contained in sects. 6 and 7 affects the right of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under those sections as may be required for giving effect to the obligations imposed on them by statute (*e.g.*, we suppose a mortgage to raise money for death duties presently payable).

(6) A conveyance, if made by deed, may contain a reservation to the person conveying of a term of years absolute in the land conveyed upon trusts for indemnifying him against any unpaid death duties in respect of the land conveyed or any interest therein, and any interest and costs in respect of such duties.

(7) Nothing contained in sects. 6 and 7 affects any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under either of those sections. (Cp. sect. 3 of L. P. A., *ante*. And see, for an example, the first note in Specimen No. 3 of Epitomes of Abstracts of Title in 6th Sched. of L. P. A., *ante*.)

Procedure in the case of settlements and of instruments deemed to be settlements.—The authorised method of settling land *inter vivos* after 1925, as has appeared in sect. 4, *ante*, is by a vesting deed and a trust instrument. But there will be many cases of settlements for the purposes of the Act which are not made in this way. The procedure in these special cases is laid down by sect. **9**, which provides as follows:—

"(1) Each of the following settlements or instruments shall for

the purposes of this Act be deemed to be a trust instrument, and any reference to a trust instrument contained in this Act shall apply thereto, namely—

" (i) An instrument executed, or, in case of a will, coming into operation, after the commencement of this Act which by virtue of this Act is deemed to be a settlement;

[*e.g.*, where an infant takes absolutely under a will the will is deemed to be a settlement.]

" (ii) A settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act;

[*e.g.*, where an infant takes under an intestacy, a settlement is deemed to have been made by the intestate (sect. 1 (2), *ante*); and where a husband takes an estate by the curtesy (as he still might if his wife had an estate tail, L. P. A. s. 130 (4)), he is deemed to take under a settlement made by his wife. (Sect. 20 (3).)]

" (iii) An instrument *inter vivos* intended to create a settlement of a legal estate in land which is executed after the commencement of this Act, and does not comply with the requirements of this Act with respect to the method of effecting such a settlement; and

[This guards against inadvertent attempts to settle land in the old fashioned way, by conveying the land to or in trust for persons in succession by a single instrument, instead of in the manner required by sect. 4, *ante*.]

" (iv) A settlement made after the commencement of this Act (including a settlement by the will of a person who dies after such commencement) of any of the following interests—

" (a) an equitable interest in land which is capable, when in possession, of subsisting at law; or

" (b) an entailed interest; or

" (c) a base or determinable fee or any corresponding interest in leasehold land;

but only if and when the interest settled takes effect free from all equitable interests and powers under every prior settlement (if any).

[*e.g.*, if a remainderman entitled to an equitable fee simple or entailed interest were to make a settlement during

the life of the tenant for life, this settlement would be treated as a trust instrument on the death of the tenant for life if the land then ceased to be settled land under the first settlement, and a principal vesting deed should be executed for the new settlement under the next paragraph.]

"(2) As soon as practicable after a settlement or instrument which, for the purposes of this Act, is deemed to be a trust instrument takes effect as such, the trustees of the settlement may, and on the request of the tenant for life or statutory owner shall, execute a principal vesting deed (containing the proper statements and particulars (see sect. 5, *ante*)) declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named, being the tenant for life or statutory owner, and including themselves if they are the statutory owners, and such deed shall, unless the legal estate is already so vested, operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid, and, if more than one, as joint tenants.

[This sub-section is drawn widely enough to include a settlement made by the will of a person who dies after 1925, for the will is deemed to be a trust instrument. (Sect. 6, *ante*.) But in that case a principal vesting deed or vesting assent, which must contain the same particulars, will be executed by the personal representatives, and the provisions of this sub-section are not apparently intended to come into play, except where the person beneficially entitled in possession is an infant. As to the effect of dispositions made before the principal vesting deed is made, see sect. 13, *post*.]

"(3) If there are no trustees of the settlement, then (in default of a person able and willing to appoint such trustees) an application under this Act shall be made to the Court for the appointment of such trustees.

"(4) The provisions of the last preceding section with reference to a conveyance shall apply, so far as the same are applicable, to a principal vesting deed under this section."

Acquisition of land to be made subject to a settlement.—This is dealt with by sect. **10,** which is not of so much importance to the ordinary practitioner as the preceding section, and may be dealt with more shortly. Where, after 1925, land is acquired with capital money or in exchange for settled land, or a rent-charge is reserved

on a grant of settled land, the land is to be conveyed to, or the rent-charge vested in the tenant for life or statutory owner. Such conveyance or grant is called a "subsidiary vesting deed," though there is one special case in which it has to be framed as a principal vesting deed. (Sect. 10 (1).) If executed on the acquisition of land, the subsidiary vesting deed must contain—

(a) particulars of the last or only principal vesting instrument;
(b) a statement that the land is to be held on the trusts of such last or only principal vesting instrument;
(c) the names of the trustees of the settlement;
(d) the name of the person for the time being entitled to appoint new trustees. (Sect. 10 (2).)

A subsidiary vesting deed reserving a rent-charge on a grant of settled land (see sect. 39, *post*) must contain—

(a) a statement that the rent-charge is vested in the grantor and is subject to the settlement;
(b) particulars of the last or only principal vesting instrument. (Sect. 10 (3).)

A subsidiary vesting deed will not be invalidated by errors. (*Ibid.* (4).) The acquisition of the land will not operate to increase or multiply charges or powers of charging. (*Ibid.* (5).)

Contracts for settlements of land are, by sect. **11** (1), if entered into after 1925, in some instances to be deemed "estate contracts" within L. C. A., and should therefore be registered as land charges, otherwise they will be void against a purchaser of a legal estate for money or money's worth. (L. C. A. ss. 10 and 13, *post*.)

The contracts to settle within the section are—

(i) a contract on the part of an estate owner; and
(ii) a contract by a person entitled to—
(a) an equitable interest which is capable when in possession of subsisting at law; or
(b) an entailed interest; or
(c) a base or determinable fee or a corresponding interest in leasehold land;

but contracts under paragraph (ii) will only be registrable if and when the interest of the person entitled takes effect free from all equitable interests and powers under any prior settlement. Thus, if a remainderman entitled in fee simple or in tail agrees to make

a settlement, the contract becomes an "estate contract" when the tenant for life is dead and the existing settlement is at an end.

Effect must be given to these estate contracts by a vesting deed and a trust instrument. (Cp. sect. 9 (1) (iv), *ante*.)

Where the contract was made before 1926, it will be sufficiently complied with if effect is given to it by a vesting deed and trust instrument. (Sect. 11 (2).) In this case registration is not necessary under L. C. A. unless the contract is assigned after 1925. (L. C. A. s. 10, *ante*.)

Power to make vesting orders as to settled land.—Wide powers are given to the Court by sect. **12,** on the application of any person interested, to make vesting orders if a conveyance, vesting deed or vesting assent cannot for any reason be obtained or obtained without undue delay or expense. If the land remains settled land, the order must contain the particulars required in a principal or subsidiary vesting deed, as the case may be. No stamp duty is payable in respect of such vesting order.

Dispositions not to take effect until vesting instrument is made.—The position which will arise in the event of the required vesting deed or vesting assent not being executed is dealt with by sect. **13,** which provides that where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour (see sects. 6, 7 and 9, *ante*), then until a vesting instrument is executed or made, any purported disposition of the land *inter vivos* by any person, other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument), is not to take effect except in favour of a purchaser of a legal estate without notice of any settlement, but, save as aforesaid, will operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate shall not be concerned with such disposition unless the contract is registered as a land charge.

Forfeiture.—Any vesting effected under the powers conferred by the Act in relation to settled land will not operate as a breach of a covenant or condition against alienation or give rise to a forfeiture. (Sect. **14** (1).)

Stamps.—Nothing in the Act operates to impose any stamp duty on a vesting or other assent. (Sect. 14 (2).)

Examples of instruments framed in accordance with the Act are contained in the 1st Schedule. (Sect. **15.** See *post*, p. 285.)

ENFORCEMENT OF EQUITABLE INTERESTS AND POWERS AGAINST ESTATE OWNER, AND DISCHARGE ON TERMINATION OF SETTLEMENT. (Sects. 16 and 17.)

Enforcement of equities.—The tenant for life, being invested with the legal estate and made an estate owner by the procedure laid down in the Act, is put in the position of a trustee to carry out the settlement and give effect to all the equitable interests affecting the land. The machinery for carrying out this principle is elaborated by sect. **16,** which follows much the same lines as sect. 3 of L. P. A., *ante*. It is a long and complicated section, but the short effect of it is:—

(1) The estate owner is a trustee to give effect to all equitable interests affecting the settled land of which he has notice according to their priorities.

(2) Where any person of full age becomes entitled to require a legal estate to be vested in him in priority to the settlement, the estate owner must, on written request, transfer or create the proper legal estate.

(3) Where mortgages are being properly created of the settled land by virtue of powers given by the settlement, the estate owner must give effect to the transaction by creating the necessary legal mortgage on request in writing.

(4) If a question arises or doubt is entertained whether any and what legal estate ought to be transferred or created under the section, application can be made to the Court.

(5) If the estate owner fails to transfer or create any such legal estate, or if there is any difficulty, the Court may make a vesting order.

Deed of discharge on termination of settlement.—The short effect of sect. **17** is that where a settlement of land is finished, the trustees must execute a deed of discharge. Thenceforth a purchaser can assume that the land has ceased to be settled land. The section provides that where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust

instrument, the persons who in the last or only principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as thereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land:

Provided that if the trustees have notice of any derivative settlement, trust for sale or equitable charge affecting such land, they shall not execute a deed of discharge until—

(a) in the case of a derivative settlement, or trust for sale, a vesting instrument or a conveyance has been executed or made for giving effect thereto; and

(b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge.

Where the land is affected by a derivative settlement or trust for sale, the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is held on trust for sale by virtue of such conveyance as aforesaid, as the case may require. (Sect. 17 (1).)

By sub-sect. (2), application can be made to the Court if there is any difficulty in obtaining the deed of discharge, and by sub-sect. (3), where a deed of discharge contains no statement to the contrary, a purchaser of a legal estate will be entitled to assume that the land has ceased to be settled land and is not subject to any trust for sale.

Restrictions on Dispositions of Settled Land where Trustees have not been Discharged. (Sect. 18.)

Protection of persons interested under settlement.—Sect. **18** is intended to protect persons interested under the settlement from improper dealings by the tenant for life. It provides as follows:—

(1) Where land is the subject of a vesting instrument and the trustees of the settlement have not been discharged under the Act, then—

(a) any disposition by the tenant for life or statutory owner of the land, other than a disposition authorised by this Act

or any other statute, or made in pursuance of any additional or larger powers mentioned in the vesting instrument, shall be void, except for the purpose of conveying or creating such equitable interests as he has power, in right of his equitable interests and powers under the trust instrument, to convey or create; and

(b) if any capital money is payable in respect of a transaction, a conveyance to a purchaser of the land shall only take effect under this Act if the capital money is paid to or by the direction of the trustees of the settlement or into Court; and

(c) notwithstanding anything to the contrary in the vesting instrument, or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement.

[In view of the very wide powers conferred by the Act, the only practical protection afforded by this section is in the payment to the two trustees or a trust corporation. (Cp. sect. 94 (1), *post*.)]

(2) The restrictions imposed by this section do not affect—

(a) the right of a personal representative in whom the settled land may be vested to convey or deal with the land for the purposes of administration;

(b) the right of a person of full age who has become absolutely entitled (whether beneficially or as trustee for sale or personal representative or otherwise) to the settled land, free from all limitations, powers, and charges taking effect under the trust instrument, to require the land to be conveyed to him;

(c) the power of the tenant for life, statutory owner, or personal representative in whom the settled land is vested to transfer or create such legal estates, to take effect in priority to the settlement, as may be required for giving effect to any obligations imposed on him by statute, but where any capital money is raised or received in respect of the transaction the money shall be paid to or by the direction of the trustees of the settlement or in accordance with an order of the Court.

Tenants for Life and Persons with Powers of Tenant for Life. (Sects. 19 to 29.)

Who is tenant for life.—Sect. **19** replaces sect. 2 (5), (6) and (7) of S. L. A. with the following amendments:—

(1) To be a tenant for life within the Act the person must be of full age.

(2) All reference to tenants in common is omitted, for tenancy in common can no longer exist at law. (L. P. A. s. 34, *ante;* and see S. L. A. s. 36, *post.*)

(3) If there are two (or more) joint tenants and they are not both (or all) of full age, the one (or more) for the time being of full age constitutes (or together constitute) the tenant for life, without prejudice to the infant's beneficial interest. (See sect. 7 (3), *ante,* as to what happens when the infant attains majority.)

(4) A tenant for life still remains tenant for life in spite of any assignment by operation of law or otherwise of his estate under the settlement whether before or after it came into possession, other than an assurance which extinguishes his estate. (See sects. 24, 104 and 105 as to the effect of assignment or surrender.)

The section defines the tenant for life as "the person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life."

See also next section as to other persons who have the powers of a tenant for life.

Limited owners generally.—Sect. **20** replaces sect. 58 of S. L. A. 1882, and sect. 8 of S. L. A. 1884, with some amendments. As the section is important, we set out *in extenso* the list of persons who, if of full age and entitled in possession, have the powers of a tenant for life, with the new matter printed in italics. The expression "tenant for life" in the Act includes all these persons, and any reference to death of a tenant for life is to be deemed, where necessary, to refer to the determination by death or otherwise of the estate or interest of any of them. (See, *e.g.*, sect. 7.) The list is as follows:—

(i) A tenant in tail, including a tenant in tail after possibility of issue extinct, and a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, but not including such a tenant in tail where the land in respect

whereof he is so restrained was purchased with money provided by Parliament in consideration of public services;

[The Crown is bound. (Sect. 20 (4).]

(ii) A person entitled to land for an estate in fee simple *or for a term of years absolute* with *or subject to, in any of such cases*, an executory limitation, gift, or disposition over on failure of his issue or in any other event;

(iii) A person entitled to a base *or determinable* fee, although the reversion or right of reverter is in the Crown, *or to any corresponding interest in leasehold land;*

[The Crown is bound. (Sect. 20 (4).]

(iv) A tenant for years determinable on life, not holding merely under a lease at a rent;

(v) A tenant for the life of another, not holding merely under a lease at a rent;

(vi) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for any purpose;

(vii) A tenant by the curtesy;

[He is deemed to take under a settlement made by his wife. (Sect. 20 (3).) But she must have died before 1926 (A. E. A. s. 45, *post*), except where she was entitled to an estate tail in possession which she has not disposed of by her will; in such a case curtesy will still be possible. (L. P. A. s. 130 (4), *ante*.)]

(viii) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether or not subject to expenses of management *or to a trust for accumulation of income for any purpose*, or until sale of the land, or until forfeiture, *cesser or determination by any means* of his interest therein, *unless the land is subject to an immediate binding trust for sale;*

[This amendment operates retrospectively, and "trust" includes a constructive trust. (4th Sched. para. 15).]

(ix) *A person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates,*

interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement;

[This confirms *Re Monckton*, (1917) 1 Ch. 224.]

(x) *A married woman entitled to land for an estate in fee simple or for a term of years absolute subject to a restraint on anticipation.*

As regards tenants in base fee, para. 14 of the 4th Schedule enacts that it shall be deemed always to have been sufficient to enable the fee simple to be disposed of or dealt with under the Settled Land Acts, 1882 to 1890, by the owner of a base fee as defined by the Fines and Recoveries Act, 1833, or fee determinable, whether by limitation or condition, or the tenant for life thereof, if there were at the time of the transaction trustees for the purposes of those Acts or any of them of the settlement consisting of the instrument whereby the estate tail or determinable fee was created, and the capital money (if any) arising on such disposition or dealing was or is paid to such trustees or into Court.

Absolute owners.—As has appeared from the previous section, an absolute owner of full age has the powers of a tenant for life if he is entitled beneficially in possession to a legal estate subject to estates, interests, charges or powers of charging subsisting or capable of being exercised under a settlement. Further, by sect. **21**, if there is no settlement, the owner can create one and thereby obtain the powers of a tenant for life for the purpose of overreaching equitable interests or powers to which his estate is subject. This he can do notwithstanding any stipulation to the contrary, and he does it by executing a deed, which will have effect as a principal vesting deed (see *ante*, sect. 5), declaring that the legal estate is vested in him to give effect to all equitable interests and powers affecting the same, and appointing two or more individuals (approved or appointed by the Court) or a trust corporation as trustees for the Act. The trustees also must execute the deed. The instrument (if any) under which his estate arises and the instrument (if any) under which the equities exist will be deemed to be the trust instrument. (See sect. 9 (2), *ante*.) If the equities do not arise under an instrument, a deed, to take effect as a trust instrument, must be executed contemporaneously with the vesting deed to declare the trusts. The trustees stated in the vesting instrument to be trustees for the purposes of the Act will also be trustees of the trust deed for those purposes. Capital money will be paid to or by the direction

of the trustees of the settlement or into Court, and will be used to discharge the equities overreached. But there are numerous equitable interests and powers which cannot be overreached in this way. (Sect. 21 (2.) These excepted equities are the same as those which cannot be overreached by creating an *ad hoc* trust for sale under sect. 3 of L. P. A. They are set out *ante*, p. 103. Subject to the powers conferred by the Act on a tenant for life, nothing in sect. 21 is to deprive an equitable chargee of any of his rights or of his remedies for enforcing those rights.

Restoration of life estate.—If, in a disentailing assurance, settled land is limited to or upon the uses or trusts subsisting immediately before the assurance, a person entitled under such previously subsisting use or trust is deemed to be entitled thereto as of his former estate. (Sect. **22** (1).)

Where a resettlement limits an estate or interest to any person in restoration of his estate or interest under a prior settlement, he will be, and be deemed always to have been, entitled as of his former estate or interest, so that he can still exercise his powers as tenant for life under the prior settlement. But he can also, and always could, exercise any powers which he would have had if his estate had subsisted under the resettlement only, *e.g.*, additional powers given by the resettlement. (Sect. 22 (2).) This and the previous subsection are designed to meet the decision in *Re Constable*, (1919) 1 Ch. 178. (See also *Re Cope and Wadland*, (1919) 2 Ch. 376.) They operate retrospectively.

Trustees' powers where no tenant for life.—There will occasionally be cases where there is a settlement but no tenant for life of full age or person of full age having the powers of a tenant for life. In such cases any person of full age on whom such powers are by the settlement expressed to be conferred, or (if none) the trustees of the settlement, are to have the powers of a tenant for life. Thus, if the land was purchased with money provided by Parliament for public services and settled for an unbarrable estate tail, the trustees can exercise the powers under the Acts but only with the consent of the tenant in tail if he is of full age and capacity. A purchaser is, however, not concerned to see that consent has been given. (Sect. **23**.)

Tenant for life parting with his interest.—By sect. **24**, where a tenant for life has by reason of bankruptcy, assignment, incumbrance, or otherwise ceased to have a substantial interest in his estate or interest in the settled land or any part thereof, and he unreason-

ably refuses to exercise any power under the Act, or consents to an order under this section, the Court may, on the application of any person interested in the settled land or the part thereof affected, make an order authorising the trustees of the settlement to exercise any of his powers, and the Court may direct that any documents of title in his possession relating to the settled land be delivered to the trustees.

While any such order is in force, the tenant for life cannot exercise any of the powers thereby authorised to be exercised by the trustees, but no person dealing with the tenant for life will be affected by any such order, unless it is for the time being registered as an order affecting land. (See L. C. A. s. 6, *post*.)

An order may be made under this section at any time after the estate of the tenant for life has taken effect in possession, and notwithstanding that he disposed thereof when it was an estate in remainder or reversion.

See further, as to assignments of his life interest by a tenant for life, sect. 104, *post*. On his bankruptcy his estate does not vest in the trustee. (Sect. 103, *post*.)

Married women.—By sect. **25** the foregoing provisions of this Act apply to a married woman of full age, whether or not she is entitled to her estate or interest for her separate use or as her separate property, and she, without her husband, may exercise the powers of a tenant for life under this Act. A restraint on anticipation in the settlement will not prevent the exercise by her of any power under this Act. The power to act without her husband even where the property is not separate is new.

There was formerly a doubt owing to the wording of sect. 61 of S. L. A. 1882 whether an infant married woman came within sects. 59 and 60 of the Act. This is set at rest retrospectively by para. 16 of 4th Schedule.

A married woman tenant in fee simple subject to a restraint on anticipation is within the Act. (Sects. 1 (1) (iv), and 20 (1) (x), *ante*.)

Infants.—A new and much more elaborate section is substituted for sect. 59 of S. L. A. 1882 (which section, it may be noticed, is deemed always to have extended to any leasehold interest whether at a rent or not). (4th Sched. para. 16.) As has already appeared, an infant cannot be an estate owner, and by sect. 1 (1) (ii) (d), *ante*, there is a settlement for the purposes of the Act where land is limited

in trust in possession for an infant for an estate in fee simple or for a term of years absolute (and see sect. 1 (2) and (3)), and there is, of course, a settlement if his beneficial interest in possession is only for life or for any other limited interest within sect. 20, *ante*. Sect. **26** in those cases gives full powers during the minority either to the trustees of the settlement or to personal representatives, sub-sect. 1 providing that—

"Where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute or would if of full age be a tenant for life of or have the powers of a tenant for life over settled land, then, during the minority of the infant—

"(a) if the settled land is vested in a personal representative, the personal representative, until a principal vesting instrument has been executed pursuant to the provisions of this Act; and

"(b) in every other case, the trustees of the settlement;

shall have, in reference to the settled land and capital money, all the powers conferred by this Act and the settlement on a tenant for life, and on the trustees of the settlement."

This provision only applies where the infant is solely entitled or where all the persons entitled are infants. (Sect. 26 (4) and (5).) Where he is entitled jointly with a person of full age, the latter takes the whole legal estate during minority (L. P. A. s. 19 (2); S. L. A. s. 19 (3)), and, if the land is settled land, can exercise the powers under this Act. (S. L. A. s. 19 (3).)

The two cases which will usually arise appear to be: (1) An infant may become absolutely entitled under a will or intestacy. Here the personal representatives will hold the land during his minority and exercise the statutory powers, unless they take advantage of sect. 42 of A. E. A., which allows them to appoint other trustees and vest the property in them. (2) Or he may become entitled to settled land on the death of a previous owner. Here the trustees of the settlement will probably become the special personal representatives. (A. E. A. ss. 10, 22 to 24.) If they are not, then the personal representatives must, if so required by the trustees, vest the land in the trustees, sub-sect. 2 of sect. 26 providing that—

"If the settled land is vested in a personal representative, then, if and when during the minority the infant, if of full age, would have been entitled to have the legal estate in the settled land conveyed to

or otherwise vested in him pursuant to the provisions of this Act (see sect. 7, *ante*), a principal vesting instrument shall, if the trustees of the settlement so require, be executed, at the cost of the trust estate, for vesting the legal estate in themselves, and in the meantime the personal representatives shall, during the minority, give effect to the directions of the trustees of the settlement, and shall not be concerned with the propriety of any conveyance directed to be made by those trustees if the conveyance appears to be a proper conveyance under the powers conferred by this Act or by the settlement, and the capital money, if any, arising under the conveyance is paid to or by the direction of the trustees of the settlement or into Court, but a purchaser dealing with the personal representative and paying the capital money, if any, to him shall not be concerned to see that the money is paid to trustees of the settlement or into Court, or to inquire whether the personal representative is liable to give effect to any such directions, or whether any such directions have been given."

This sub-section applies whether the infant becomes entitled before or after the commencement of this Act, and has effect during successive minorities until a person of full age becomes entitled to require the settled land to be vested in him. (Sect. 26 (3).)

The section does not affect prejudicially any beneficial interest of the infant. (Sect. 26 (6).)

Effect of conveying legal estate to infant.—Sect. 27 on this point has already been dealt with under sect. 19 of L. P. A., *ante*.

Lunatics.—Sect. **28** replaces sect. 62 of S. L. A. 1882, as extended by Lunacy Act, 1908. There is little alteration.

Where a tenant for life, or a person having the powers of a tenant for life, is a lunatic or a defective, his committee or receiver may act in his name under an order in lunacy. The order may be made on the application of any person interested in the settled land, or of the committee or receiver. Orders may be either general or particular and may be made without requiring the estate to be administered in lunacy. A receiver may be appointed to act solely in relation to the settled land or in relation to particular settlement.

Charitable trusts.—By sect. **29** all land vested in trustees on charitable, ecclesiastical, or public trusts, whenever the trust was created, not being land to which the U. & C. E. A. applies (see *post*, p. 352), is deemed settled land, and the trustees have all the powers conferred by the Act on a tenant for life, and on the trustees

of the settlement, but not so as to constitute them statutory owners. The statute or other instrument creating the trust or under which it is administered is deemed the settlement, and no separate instrument for giving effect to the settlement is necessary except where the trust is created by a will coming into operation after 1925. The powers are exercisable subject to such consents or orders as would, if the Act had not been passed, have been requisite if the transaction were being effected under an express power conferred by the instrument creating the trust. A purchaser who has notice of the trust must see that such consents or orders have been obtained.

The same section amends sect. 4 of the Mortmain and Charitable Uses Act, 1888, by providing that an assurance of land, or of personal estate to be laid out in the purchase of land for charitable uses made after 1925 must, instead of being attested by two witnesses and enrolled in the Central Office as required by that section, be sent to the Charity Commissioners within six months after execution for the purpose of being recorded in their books. This provision does not apply to registered dispositions of registered land, or to assurances required by sect. 117 of the Education Act, 1921, to be sent to the Board of Education.

Trustees of Settlements. (Sects. 30 to 35.)

Who are trustees for purposes of the Act.—Sect. **30** takes the place, with but little alteration, of sect. 2 (8) of S. L. A. 1882, and sect. 16 of S. L. A. 1890. As the question who are trustees for the purposes of the Act often arises in practice, we set the section out *in extenso*.

30.—(1) Subject to the provisions of this Act the following persons are trustees of a settlement for the purposes of this Act, and are in this Act referred to as the "trustees of the settlement" or "trustees of a settlement," namely—

(i) the persons, if any, who are for the time being under the settlement, trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then

(ii) the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for the purposes

of the Settled Land Acts, 1882 to 1890, or any of them, or this Act, or if there are no such persons; then

(iii) the persons, if any, who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such a power of sale, or, if there are no such persons; then

(iv) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not, or, if there are no such persons; then

(v) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement.

(2) Paragraphs (i) (iii) and (iv) of the last sub-section take effect in like manner as if the powers therein referred to had not by this Act been made exercisable by the tenant for life or statutory owner. (See sects. 108 and 109, *post*.)

(3) Where a settlement is created by will, or a settlement has arisen by the effect of an intestacy, and apart from this sub-section there would be no trustees for the purposes of this Act of such settlement, then the personal representatives of the deceased shall, until other trustees are appointed, be by virtue of this Act the trustees of the settlement, but where there is a sole personal representative, not being a trust corporation, it shall be obligatory on him to appoint an additional trustee to act with him for the purposes of this Act, and the provisions of the Trustee Act, 1925, relating to the appointment of new trustees and the vesting of trust property, shall apply accordingly. (See sects. 36 *et seq.* of T. A., *post*.)

Compound settlement trustees.—Trustees for the purposes of the Acts of a settlement still subsisting (see sect. 3, *ante*) are trustees

also of any settlement constituted by that instrument and any subsequent instruments. (Sect. **31** (1).) This applies to instruments coming into operation before as well as after the Act, but it does not apply if the Court has previously appointed or subsequently appoints trustees of the compound settlement. (Sect. 31 (2).)

Trustees of referential settlements.—Where settlement A. settles property upon the limitations of settlement B., with or without variation, and settlement A. appoints no trustees for the Act, the trustees of settlement B. will be, and be deemed always to have been (4th Sched. para. 9), trustees for the Act of settlement A. This applies to instruments coming into operation before or after the Act, but it does not apply if the Court has previously appointed or subsequently appoints trustees of settlement A. or of the compound settlement consisting of the two settlements. (Sect. **32**.) See also sect. 91, *post*, which enables estates settled by different settlements upon the same limitations, whether by reference or otherwise, to be treated as one aggregate estate.

Continuance of trustees in office.—Where any persons have once become trustees for the purposes of the Act, they or their successors in office remain trustees so long as the settlement subsists. (Sect. **33** (1). As to duration of the settlement, see sect. 3, *ante*.) This operates retrospectively; but subject to certain savings. (Sect. 33 (3).)

Certain compound settlements. If the Court has appointed trustees of a compound settlement, and the tenant for life under an instrument mentioned in the order as constituting part of the compound settlement has disposed of the land and the capital money has been paid to the trustees appointed, the person to whom the disposition is made gets a good title although the instruments mentioned in the order were not a compound settlement or were not all the instruments or some of them did not form part of the settlement. This operates retrospectively, but subject to certain savings. (Sect. 33 (2) and (3).)

Appointment of trustees by Court. Full power is given to the Court to appoint trustees of the settlement by sect. **34**, which replaces in a wider form sect. 38 of S. L. A. 1882.

Procedure on appointment or discharge of trustees.—Whenever a new trustee for the purposes of the Act is appointed of a trust

instrument or such a trustee is discharged, a deed must be executed supplemental to the last or only principal vesting instrument declaring who are now the trustees for those purposes, and a memorandum of their names and addresses must be endorsed on the last or principal vesting instrument in accordance with sect. 35 of T. A., *post*. The deed must be executed by such person as the Court may direct if the appointment or discharge is made by the Court; otherwise it must be executed by (i) the person (if any) named in the principal vesting instrument as the person entitled to appoint new trustees, or (if none or if the person named is dead or cannot or will not act) the persons who, if such principal vesting instrument had been the only instrument constituting the settlement, would have had power to appoint new trustees; (ii) the persons named in the deed of declaration as the trustees; and (iii) any trustee who is discharged or retires. A statement in the deed that the person named as entitled to appoint new trustees is unable or unwilling to act, or that a trustee has remained out of the United Kingdom for more than twelve months, or refuses or is unfit to act or is incapable of acting, will be conclusive evidence in favour of a purchaser of a legal estate. (Sect. **35**.)

PROVISIONS AS TO UNDIVIDED SHARES. (Sect. 36.)

Undivided shares.—Sect. 34 of L. P. A., *ante*, having forbidden the creation of a legal tenancy in common, sect. **36** of S. L. A. makes provision for cases where persons are beneficially entitled in possession to settled land as tenants in common. The land is to be vested in the trustees of the settlement on trust for sale, and they will have all the powers given to trustees for sale by sect. 28 of L. P. A., *ante*, which include the S. L. A. powers. The section provides as follows:—

36.—(1) If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration), at the cost of the trust estate, to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as

would have been applicable thereto if it had been so conveyed to or vested in the trustees.

(2) If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage, but freed from any incumbrances affecting the undivided shares or not secured as aforesaid, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) upon the statutory trusts.

(3) If the estate owner refuses or neglects for one month after demand in writing to convey the settled land so held in trust in undivided shares in manner aforesaid, or if by reason of his being outside the United Kingdom or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the Court is satisfied that the conveyance cannot otherwise be made, or cannot be made without undue delay or expense, the Court may, on the application of the trustees of the settlement, make an order vesting the settled land in them on the statutory trusts.

(4) An undivided share in land shall not be capable of being created except under a trust instrument or under the Law of Property Act, 1925, and shall then only take effect behind a trust for sale.

(5) Nothing in this section affects the priority *inter se* of any incumbrances whether affecting the entirety of the land or an undivided share.

(6) For the purposes of this section land held upon the statutory trusts shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same, with power to postpone the sale of the whole or any part thereof, and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale, after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons interested in the settled land.

(7) The provisions of this section bind the Crown.

TRANSITIONAL PROVISIONS. (Sect. **37.**)

The Act creating such a revolution with regard to settlements of land, machinery has to be provided to convert settlements existing at the end of 1925 into the authorised form and to vest the legal estate in the persons entitled to have it under the new law. These provisions will be found in the **2nd Schedule.** It deals separately with (1) the vesting of the legal estate in the tenant for life or statutory owner; (2) settled land vested in personal representatives; (3) infants.

Paragraph (1) *Provisions for vesting Legal Estate in Tenant for Life or Statutory Owner.*

(1) A settlement subsisting at the commencement of the Act is, for the purposes of the Act, a trust instrument.

(2) As soon as practicable after 1925, the trustees for the purposes of the Act (whether or not the settled land is already vested in them) may, and on the request of the tenant for life or statutory owner must, at the cost of the trust estate, execute a principal vesting deed (containing the proper statements and particulars (see sect. 5, *ante*)) declaring that the legal estate shall vest or is vested in the person or persons therein named (being the tenant for life or statutory owner, and including themselves if they are the statutory owners), and such deed will (unless the legal estate is already so vested) operate to convey or vest the legal estate to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3) If there are no trustees, then (in default of a person able and willing to appoint such trustees) an application must be made to the Court for their appointment by the tenant for life or statutory owner, or by any other person interested.

(4) If default is made in executing a principal vesting deed, the provisions relating to vesting orders will apply as if the trustees were persons in whom the settled land is wrongly vested. (See sect. 12, *ante*.)

(5) This paragraph does not apply where settled land is held at law or in equity in undivided shares vested in possession. (In that case the legal estate vests by virtue of Part IV. of 1st Schedule to L. P. A., *ante*, p. 126, in the trustees of the settlement (if any) or, if none, in the Public Trustee pending their appointment, and it is held on trust for sale.)

(6) All the estates, interests and powers limited by the settlement, which are not by statute otherwise converted into equitable interests or powers (see L. P. A. s. 1, *ante*), shall, as from the date of the principal vesting deed or the vesting order, take effect only in equity.

(7) This paragraph does not apply where settled land is vested in personal representatives at the commencement of this Act, or where settled land becomes vested in personal representatives before a principal vesting deed has been executed pursuant to this paragraph. (See paragraph (2) below.)

(8) No *ad valorem* stamp duty is payable in respect of a vesting deed or order made for giving effect to an existing settlement.

Paragraph (2) Provisions where settled land is at commencement of Act vested in personal representatives.

These provisions follow the same lines as sects. 7 and 8, *ante*. They are to the following effect:—

(1) Where settled land remains at the commencement of this Act vested in the personal representatives of a person who dies before such commencement, or becomes vested in personal representatives before a principal vesting deed has been executed, the personal representatives will hold on trust, if and when required, to convey to the person who, under the trust instrument, or by virtue of the Act, is the tenant for life or statutory owner, and, if more than one, as joint tenants.

(2) A conveyance under this paragraph will be made at the cost of the trust estate, and may be made by an assent in writing signed by the personal representatives which will operate as a conveyance. (See Form No. 5 in 1st Schedule, *post*.) No stamp duty is payable in respect of a vesting assent.

(3) The obligation to convey imposed on personal representatives by this paragraph is subject and without prejudice (a) to their rights and powers for purposes of administration; and (b) to their being satisfied that provision has been or will be made for payment of any unpaid death duties for which they are accountable (see sect. 16 of L. P. A., *ante*), or that they are otherwise effectually indemnified against such duties.

(4) A conveyance under this paragraph will (a) if by deed, be a principal vesting deed; and (b) if by an assent, be a vesting assent, which must contain the like statements and particulars as are required in the case of a principal vesting deed. (See sect. 5, *ante*.)

(5) The paragraph does not affect the rights of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under this paragraph as may be required for giving effect to the obligations imposed on them by statute (*e.g.*, they can mortgage for duties presently payable).

(6) A conveyance by personal representatives under this paragraph, if made by deed, may contain a reservation of a term of years absolute to indemnify them against any unpaid death duties.

(7) The paragraph does not affect any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under this paragraph.

Paragraph (3) *Provisions as to Infants.*

These have already been set out under sect. 39 of L. P. A., *ante*, p. 123. Shortly, if at the beginning of 1926 an infant is beneficially entitled in possession to a fee simple or term of years absolute, or would if of full age be a tenant for life, or have the powers of a tenant for life (see sect. 20, *ante*), the land is to vest in the trustees of the settlement (if any); if none, in the Public Trustee, pending their appointment. But this does not apply if the legal estate is vested in personal representatives—the case will then be governed by para. 2 of the Schedule, *ante*—nor when the infant is entitled jointly with a person of full age, in which case the legal estate vests entirely in the latter.

PART II.

POWERS OF A TENANT FOR LIFE. (Sects. 38 to 72.)
SALE AND EXCHANGE. (Sects. 38 to 40.)

This Part of the Act will present few difficulties to the practitioner. It is mostly the familiar law of the S. L. A. 1882 to 1890. What amendments there are are mainly in the direction of increasing the powers of a tenant for life and putting him even more in the position of an absolute owner than he has been since 1882.

In dealing with this and the succeeding Parts of the Act we shall call attention to the main alterations and only set out the old provisions so far as may be necessary to enable the amendments to be understood.

Power to sell or exchange.—Sect. **38** replaces sect. 3 of S. L. A. and sect. 5 of S. L. A. 1890 with a slight amendment as regards exchanges.

Regulations respecting sales.—Sect. **39** contains regulations which repeat sect. 4 (1), (3), (4) and (5) of S. L. A. 1882, with the following alterations:—

(1) Sale for a rent.—A sale of settled land, or of any easement, right or privilege over it, may be made in consideration, wholly or partly, of a perpetual or terminable rent-charge. In the case of a terminable rent-charge, the parts attributable to principal and interest respectively must be distinguished, and the former will be capital. (Sect. 39 (2).) The rent must be the best rent, except that for the first five years it may be a peppercorn or nominal rent. (Sect. 39 (3).) The conveyance must contain a covenant to pay the rent and a condition of re-entry for non-payment, and the purchaser must execute a duplicate of the conveyance and deliver it to the tenant for life. (Sect. 39 (4).) The conveyance will be a subsidiary vesting deed and must contain certain particulars. (See sect. 10, *ante*.)

(2) Sale to company for shares or debentures.—The consideration on a sale under the Act to a company incorporated by special Act of Parliament, or by any order, &c. having the force of an Act, may, with the consent of the tenant for life, consist, wholly or partly, of fully paid securities of the company. The securities will be vested in the trustees. (Sect. 39 (5).)

Regulations respecting exchanges contained in sect. 4 (2), (5) and (8) of S. L. A. 1882 are replaced by sect. **40**, without substantial alteration.

Leasing Powers. (Sects. 41 to 48.)

Length of leases.—The length of lease which a tenant for life can grant after 1925 is greatly increased. He may grant a building lease for 999 years, a mining lease for 100 years, any other lease for fifty years. And a new power to lease to the Forestry Commissioners for 999 years is conferred. (Sect. **41**; for regulations concerning such leases, see sect. 48.) This section alters sect. 6 of the S. L. A. 1882, under which the periods are ninety-nine, sixty and twenty-one, respectively.

Regulations as to leases are contained in sect. **42**, replacing sect. 7 of S. L. A. 1882, sect. 4 of S. L. A. 1884, and sect. 7 of S. L. A. 1890, with the following alteration:—

Leases in reversion.—After 1925, a tenant for life can grant a new lease to take effect in reversion after an existing lease not having more than seven years to run. (Sect. 42.) This alters sect. 7 of the S. L. A. 1882, under which the lease had to take effect in possession not later than twelve months after its date.

Leasing powers for special objects.—The power of a tenant for life under sect. 12 of S. L. A. 1882, to grant leases to give effect to a covenant for renewal or to confirm a previous void or voidable lease, is repeated by sect. **43**.

Building leases.—The provisions of sect. 8 of S. L. A. 1882 are repeated without alteration in sect. **44**.

Mining leases.—No alteration is made by sect. **45**, which re-enacts sect. 9 of S. L. A. 1882, as amended by sect. 8 of S. L. A. 1890.

Variation of building or mining leases according to circumstances of district.—The Court's power under sect. 10 of S. L. A. 1882 to vary the length or terms of building or mining leases is repeated, with no substantial alteration, by sect. **46**. In view of sect. 41 above, an application to allow longer leases will not be frequent.

Capitalisation of part of mining rent.—The law laid down by sect. 11 of S. L. A. 1882 as to this remains unaltered. (Sect. **47**.)

Forestry leases.—Regulations respecting these leases are contained in sect. 48. A nominal rent may be made payable for the first ten years; the rent may be made ascertainable by or to vary according to the value of the timber or the amount cut, and a minimum rent may be reserved, and any other provisions may be made for sharing the proceeds with the Forestry Commissioners. (Sect. **48**.)

Miscellaneous Powers. (Sects. 49 to 64.)

Imposing restrictions and making reservations.—Sect. 4 (6) of the Settled Land Act, 1882, was repealed by L. P. A. 1922, s. 36 (5), and re-enacted in an amplified form. It is now sect. **49** of S. L. A., which incorporates also sect. 13 of L. P. A. A. 1859.

On a sale or other disposition or dealing under the Act (a) any easement, right or privilege may be reserved or granted over or in relation to the settled land, or any part thereof or other land, including the land disposed of or taken in exchange; (b) any restriction as to building on or user of land, or as to mines or any other thing, may be imposed on the tenant for life or statutory owner and the settled land, or on the other party and any land disposed of to him; (c) any capital or annual sum charged on the land disposed of and other land subject to the settlement may be charged exclusively on the land disposed of or on the other land; but this will not prejudice the rights of the person entitled to the capital or annual sum. (Sect. 49 (1).) Past transactions of this kind are validated. (4th Sched., para. 5.)

Timber and fixtures.—On a sale timber may be taken at a valuation. The amount of the valuation will be capital. (Sect. 49 (2).) It is provided in favour of a purchaser by 4th Schedule, paragraph 6, that a sale made before the Act is not to be invalid by reason only that the timber was taken at a valuation, provided the money for it was paid to the trustees or into Court.

Where on a sale the consideration attributable to any timber or fixtures is by mistake paid to a tenant for life or other person not entitled to receive it, then, if such person or the purchaser or the persons deriving title under either of them subsequently pay the aforesaid consideration, with such interest, if any, thereon as the Court may direct, to the trustees of the settlement or other persons entitled thereto or into Court, the Court may, on the application of the purchaser or the persons deriving title under him, declare that the disposition is to take effect as if the whole of the consideration had at the date thereof been duly paid to the trustees of the settlement or other persons entitled to receive the same. The person, not entitled to receive the same, to whom the consideration is paid, and his estate and effects will remain liable to make good any loss attributable to the mistake. (Sect. 49 (3), replacing sect. 13 of L. P. A. A. 1859.)

Surface and minerals.—Sect. **50** replaces sect. 17 of S. L. A. 1882, in a wider form. The old section allowed surface and minerals to be dealt with separately on "a sale, exchange, partition or mining lease." The new section authorises this to be done on "a sale, exchange, lease, or other authorised disposition." And this is made by paragraph 4 of 4th Schedule to operate retrospectively.

Options.—Hitherto the only case in which a tenant for life has been able to grant an option to purchase has been in a building lease under S. L. A. 1889. That Act was repealed by sect. 44 (7) of L. P. A. 1922, and now appears in a wider form in sect. **51** of S. L. A., which allows a tenant for life at any time, with or without consideration, to grant by writing an option to purchase or take a lease of the settled land, or any easement, right or privilege over it, at a price or rent fixed at the time of granting the option. (Sect. 51 (1).) The option must be made exercisable within an agreed number of years not exceeding ten. (Sect. 51 (2).) The price or rent must be the best obtainable, and may be either a specified sum of money or rent, or at a specified rate, or a stated number of years' purchase. (Sect. 51 (3).) Any consideration for the grant of the option will be capital. (Sect. 51 (5).)

Surrenders and regrants.—Sect. 13 of S. L. A. 1882 is replaced by sect. **52,** and extended so as to enable a tenant for life to accept not only a surrender of a lease but also a regrant of any land granted in fee simple with or subject to a reservation thereout of a perpetual or terminable rent-charge which is or forms part of the settled land. A regrant must be made to the tenant for life or statutory owner, and will be deemed a subsidiary vesting deed, and must therefore contain the statements and particulars required by sect. 10, *ante*.

All money, not being rent or a rent-charge, received on the exercise by the tenant for life of the powers conferred by this section, will, unless the Court, on an application made within six months after the receipt thereof or within such further time as the Court may in special circumstances allow, otherwise directs, be capital money arising under this Act. (Sect. 52 (7).)

It is doubtful whether this provision overrules the decision in *Re Penrhyn's Settlement*, (1922) 1 Ch. 500, following *Re Hunloke's S. E.*, (1902) 1 Ch. 141, where it was held that a legal tenant for life accepting a surrender of a lease could keep any money paid, on the ground that he accepted the surrender as legal owner of the reversion and not under the statutory power. If that decision is not overruled, then *Re Rodes*, (1909) 1 Ch. 815, which decided that an *equitable* tenant for life could not keep the money, is rendered obsolete by the Act as regards strict settlements, as the tenant for life will always be the legal owner, except where there is an immediate trust for sale.

Lease of other land to tenant for life.—A tenant for life may accept a lease of land or of mines, easements, &c. to be enjoyed with the settled land for such period and on such terms as he thinks fit; but no fine can be paid out of capital money. (Sect. **53** (1).) The lease will be granted to the tenant for life or statutory owner and will be deemed a subsidiary vesting deed. (Sect. 53 (2); see sect. 10, *ante*.) It may contain an option to purchase the reversion. (Sect. 53 (3).)

Grants of water rights to statutory bodies.—For the development, improvement, or general benefit of the settled land, or any part thereof, sect. **54** gives to the tenant for life wide powers of granting or leasing water rights for a nominal price or rent, or gratuitously to an authority having statutory powers to supply water to the place in which the settled land or any part of it is situate. Any money except rent received in this way will be capital. (Sect. 54.)

Grants of land for public and charitable purposes.—For the development, improvement or general benefit of the settled land or any part thereof, a tenant for life may grant or lease land at a nominal price or rent, or gratuitously (i) for public buildings, or (ii) for a railway, canal, road, dock, sea-wall, embankment, drain, watercourse or reservoir, or (iii) for any other public or charitable purpose. In any particular case not more than one acre may be conveyed for any purpose under (i) or (iii), or more than five acres under (ii), unless the full consideration be paid or reserved in respect of the excess. Any money received will be capital, unless it is rent. (Sect. **55.**) The powers under this section are additional to those conferred by sect. 31 of the Housing, Town Planning, &c. Act, 1919, and sect. 29 of the Land Settlement (Facilities) Act, 1919, now replaced by sect. 57, *post*.

Dedication for streets, &c.—The power to lay out part of the settled land for streets and other purposes conferred by sect. 16 of S. L. A. 1882, reappears in sect. **56,** with the additional provision that it can be exercised at any reasonable time, and not merely in connection with a building grant or lease (sect. 56 (1)), and that in regard to the dedication of land for public purposes a tenant for life is to be in the same position as if he were an absolute owner. (Sect. 56 (2).) There is no limit of acreage in this section as there is in sect. 55 above. This operates retrospectively. (4th Sched., para. 3.)

A tenant for life is deemed always to have had power (a) to agree as to the recompense to be made for taking part of the land to widen a highway; (b) to consent to the diversion of a highway; and to consent under sect. 36 of the Highway Act, 1862, to a road being declared a public highway. (*Ibid.* (3), and 4th Sched., para. 3.) All money received under this section, not being rent, will be capital. (*Ibid.* (4).)

Small dwellings, &c.—An amalgamation of sect. 18 of S. L. A. 1890, sect. 74 (1) (a) of the Housing of the Working Classes Act, 1890, sect. 40 (4) of the Small Holdings and Allotments Act, 1908, sect. 31 of the Housing, Town Planning, &c. Act, 1919, and sect. 29 of the Land Settlement (Facilities) Act, 1919, has produced the following section:—

57.—(1) Where land is sold, or given in exchange or leased—

(a) for the purpose of the erection on such land of small dwellings; or

(b) to the council of a county or county borough for the purposes of small holdings;

the sale, exchange, or lease may, notwithstanding anything contained in this Act, be made for such consideration in money, or land, or in land and money, or may reserve such rent, as having regard to the said purposes and to all the circumstances of the case, is the best that can reasonably be obtained, notwithstanding that a better consideration or rent might have been obtained if the land were sold, exchanged, or leased, for another purpose.

(2) Notwithstanding anything contained in, and in addition to the other powers conferred by this Act, a tenant for life may at any time—

(a) for the purpose of the erection of dwellings for the working classes, or the provision of gardens to be held therewith; or

(b) for the purpose of the Small Holdings and Allotments Acts, 1908 to 1919;

make a grant in fee simple or absolutely, or a lease for any term of years absolute of any part of the settled land, with or without any easement, right or privilege of any kind over or in relation to the settled land or any part thereof, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained or gratuitously:

Provided that, except under an order of the Court, not more than two acres in the case of land situate in an urban district, or ten acres in the case of land situate in a rural district, in any one parish shall be granted or leased under the powers conferred by this sub-section, unless the full consideration be paid or reserved in respect of the excess.

(3) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

As to a tenant for life providing working-class dwellings at his own expense, see sect. 107, *post*.

Compromises, releases, &c. by tenant for life.—Very wide powers of compromising, compounding, &c. claims, disputes and questions relating to the settled land are given to the tenant for life by sect. **58** (1). They must be exercised with the written consent of the trustees. With similar consent he may release, waive or modify any covenant or restriction imposed on other land for the benefit of the settled land, or release any other land from an easement, right or privilege, including a right of pre-emption. (Sect. 58 (2). Cp. sect. 186 of L. P. A., *ante*.) He is also given power to enter into a special contract relating to support by minerals in connection with sect. 78 of the Railway Clauses Consolidation Act, 1845, or sect. 22 of the Waterworks Clauses Act, 1847, as affected by Part II. of the Mines (Working Facilities and Support) Act, 1923. (Sect. 58 (3).)

Varying leases and grants, and giving licences and consents.—A tenant for life may also, without the trustees' consent, by deed vary, release, waive or modify the terms of any lease of the settled land or any covenants or conditions contained in any grant in fee simple at a rent, provided that the lease or grant after the variation, &c. is such as could have been made under the Act. This applies whenever the lease or grant was made. (Sect. **59** (1).) Also, where land is or has been disposed of subject to any covenant requiring the licence, consent, or approval of the covenantee or his successors in title as to (a) user of the land; or (b) the erection, construction or alteration of or addition to buildings or works; or (c) the plans or elevations of any proposed buildings or other works; or (d) any other act, matter, or thing relating to the land, or any buildings or works thereon; or (e) any assignment, under-letting

or parting with the possession of all or any part of the property comprised in any lease affecting the settled land; and the covenant enures for the benefit of settled land (including, where the disposition is a lease, the reversion expectant on the determination thereof), the licence, consent or approval may be given by the tenant for life. (Sect. 59 (2).)

Apportioning rents.—A tenant for life can also by deed apportion rents reserved on a grant or lease, whenever made, or any rent forming part of the settled land. (Sect. **60** (1).)

So, too, in the converse case, where the settled land is held under a lease or a grant reserving rent or is subject to covenants or conditions, the tenant for life may procure the variation, release, &c. of the terms, &c., including the apportionment of the rent, covenants, &c. (Sect. 60 (2).) This also applies whenever the grant or lease was made. (Sect. 60 (3).)

Consideration.—The powers given by the three preceding sections may be exercised with or without "consideration in money or otherwise." Sect. **61** defines this, and provides that all money, not being rent, payable by the tenant for life under the three sections, is to be paid out of capital money, and all money (not being rent) received by him is to be capital money unless the Court, on application within six months, or within such further time as the Court in special circumstances allows, otherwise directs.

Special provisions as to manorial incidents, &c. are contained in sect. **62.**—(1) Where rights to manorial incidents are comprised in a settlement the tenant for life may, as respects any fines payable in respect of an alienation in lieu of a fine payable for a licence authorising the alienation, agree the amount of the fine if it is not fixed by the custom of the manor.

(2) Any gross sum or an instalment thereof (attributable to capital) received in respect of the extinguishment of manorial incidents will be capital money.

(3) Where a manor, manorial incident or enfranchised land is comprised in a settlement, the tenant for life under the settlement, will have the powers conferred by Part VI. of L. P. A. 1922, on the lord or the tenant (as the case may be) in reference to a compensation agreement and matters incidental thereto.

In this sub-section "enfranchised land," "lord" and "tenant" have the same meanings as in L. P. A. 1922. (See *ante*, p. 81.)

(4) In reference to the conversion of a perpetually renewable lease or underlease into a long term, a tenant for life may enter into such agreements and do such acts and things as the lessor or lessee or underlessee, as the case may require, is by any enactment authorised to enter into or do. (See *ante*, p. 91.)

Power to complete predecessor's contracts.—Sect. **63** merely repeats sect. 6 of S. L. A. 1890, authorising a tenant for life to make any proper disposition to complete his predecessor's contracts.

Court may sanction any transaction.—Any transaction, not otherwise authorised by the Act or the settlement, may be effected by the tenant for life under an order of the Court. (Sect. **64** (1).) Transaction is very widely defined, but it does not include an application of capital money in payment for any unauthorised improvement. (Sect. 64 (2).)

Provisions as to Special Classes of Property.
(Sects. 65 to 67.)

Mansion house, park, &c.—An alteration is made in sect. 10 (2) and (3) of S. L. A. 1890, by sect. **65,** which replaces it. The principal mansion house, pleasure grounds, park and lands usually occupied therewith may be sold, leased or exchanged without consent of trustees or leave of Court in the case of a settlement made or coming into operation after 1925, unless the settlement expressly requires such consent or order. If the house is usually occupied as a farmhouse, or the whole acreage of house, pleasure grounds, park and lands usually occupied therewith does not exceed twenty-five acres, there is never any need to obtain consent or an order.

Timber.—Sect. **66** repeats without alteration sect. 35 of S. L. A. 1882, allowing a tenant for life impeachable for waste to cut ripe timber with the leave of the trustees or the Court. Three-quarters of the proceeds will be capital.

Settled chattels.—The wording of sect. 37 (1) of S. L. A. 1882, replaced by sect. **67** of S. L. A., has been altered so as to fit in with the new law, which allows chattels to be entailed. No substantial change is made. A tenant for life can sell personal chattels settled so as to devolve with settled land, or devolve therewith as nearly as may be in accordance with the law or practice in force at the date of the settlement, or settled together with

land, or upon trusts declared by reference to the trusts affecting land. An order of Court is still necessary.

At the end of the section appears the following cryptic paragraph: "Any reference in any enactment to personal chattels settled as heirlooms shall extend to any chattels to which this section applies." The proper place for such a paragraph is surely in the enactment which is affected or in an Act amending it, not in this Act, with which it has nothing to do. Or at least the enactments intended to be affected should be mentioned. Apparently reference is intended to L. P. A. s. 130 (3), *ante*.

Dealings as between Tenant for Life and the Estate. (Sect. 68.)

Hitherto, under sect. 12 of the S. L. A. 1890, certain dealings between the tenant for life and the estate have been permissible, but the section has only extended to a sale, purchase, exchange or partition. The section was repealed and replaced in a wider form by sect. 58 of L. P. A. 1922, which is now sect. **68** of S. L. A. It provides that—

(a) a sale, grant, lease, mortgage, charge or other disposition of settled land, or of any easement, right, or privilege over the same may be made to the tenant for life; or

(b) capital money may be advanced on mortgage to him; or

(c) a purchase may be made from him of land to be made subject to the limitations of the settlement; or

(d) an exchange may be made with him of settled land for other land; and

(e) any such disposition, advance, purchase, or exchange as aforesaid may be made to, from, or with any persons of whom the tenant for life is one.

In such a case the trustees of the settlement, in addition to their powers as trustees, will have all the powers of a tenant for life, and can enforce any covenants by the tenant for life. The section applies although the tenant for life is himself one of the trustees, and in that event the others can enforce the covenants. It applies although the tenant for life may be an infant, lunatic, or defective, but does not authorise dealings with any body of persons which includes a trustee (not being the tenant for life) unless the transaction is previously or subsequently approved by the Court.

INCUMBRANCES. (Sects. 69 and 70.)

Shifting incumbrances.—Sect. 5 of S. L. A. 1882—which, on a sale, exchange or partition, gives power to shift an incumbrance from the land disposed of to some other part of the settled land with the incumbrancer's consent—is replaced by sect. **69,** and extended so as to apply whether the land is sold or exchanged or not, and whether the incumbrance could be over-reached by the tenant for life exercising his statutory powers or not, and so as to enable the incumbrance to be charged on capital money instead of on the settled land. Sect. 5 is declared always to have included any incumbrance, whether capable of being over-reached by a disposition by the tenant for life or not (this confirms *Re Knight*, (1918) 1 Ch. 211), and to have enabled the incumbrance to be charged on capital money. (4th Sched. para. 1.)

Varying terms of incumbrances.—By sect. **70** a tenant for life has power, and is deemed always to have had power (4th Sched. para. 2), to vary the rate of interest, and any of the other terms of any incumbrance affecting the settled land or any part of it, with the incumbrancer's consent, and to consolidate securities. He can also, after 1925, charge the incumbrance on any part of the settled land by way of additional or substituted security, and can raise the necessary costs by mortgage.

RAISING OF MONEY. (Sect. 71.)

Mortgage.—Wider powers of mortgaging are given by sect. **71** than were contained in the sections—18 of S. L. A. 1882 and 11 of S. L. A. 1890—which it replaces. The purposes for which he can now raise capital money by legal mortgage are:—

(i) Discharging an incumbrance on the settled land or part thereof;

["Incumbrance" does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable. (Sect. 71 (2).)]

(ii) Paying for any improvement authorised by this Act or by the settlement;

(iii) Equality of exchange;

(iv) Extinguishing any manorial incidents;

(v) Compensating the steward on the extinguishment of manorial incidents and discharging the expenses incurred in connexion with the extinguishment;

(vi) Redeeming a compensation rent-charge in respect of the extinguishment of manorial incidents and affecting the settled land;

(vii) Commuting any additional rent made payable on the conversion of a perpetually renewable leasehold interest into a long term;

(viii) Satisfying any claims for compensation on the conversion of a perpetually renewable leasehold interest into a long term by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or underlessee on any renewal;

(ix) Payment of the costs of any transaction authorised by this section or either of the two last preceding sections.

Of these nine purposes numbers (ii), (iv), (v), (vi), (vii) and (viii) are new. As regards costs, it is declared by para. 7 of 4th Schedule that where under S. L. A. 1882 to 1890 power was given to raise money for any purpose it is to be deemed always to have included power to raise the proper costs of the transaction.

As the power of mortgaging will have to be exercised by creating a long term of years (see L. P. A. ss. 85 and 86, *ante*), sect. 71 (3) provides that restrictions on the statutory powers of leasing do not apply to a mortgage term.

Conveyance. (Sect. 72.)

Completion of transactions by conveyance.—Sect. **72** takes the place of sect. 20 of S. L. A. 1882, dealing with the completion of transactions and the effect of the tenant for life's conveyance. On a sale, &c. the tenant for life may effect the transaction by deed (or in writing in the case of certain short leases) to the extent of the estate or interest vested or declared to be vested in him by the last or only vesting instrument or for any less estate or interest in the manner requisite for giving effect to the sale, &c., but so that a mortgage shall be effected by the creation of a term of years absolute or by charge by way of legal mortgage and not otherwise. (Sect. 72 (1).) The provision about mortgages is designed to comply with sects. 85 and 86 of L. P. A., *ante*.

Such a deed (or writing in case of a lease which may be made by writing only, see sect. 42 (5)), to the extent and in the manner to and in which it is expressed or intended to operate and can operate under the Act, is effectual to pass the land conveyed, or the easements, &c. created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i) all legal estates and charges by way of legal mortgage having priority to the settlement; and

(ii) all legal estates and charges by way of legal mortgage which have been conveyed or created for securing money actually raised at the date of the deed; and

(iii) all leases and grants at fee farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges which—

(a) were before the date of the deed granted or made for value in money or money's worth, or agreed so to be, by the tenant for life or statutory owner, or by any of his predecessors in title, or any trustees for them, under the settlement, or under any statutory power, or are at that date otherwise binding on the successors in title of the tenant for life or statutory owner; and

(b) are at the date of the deed protected by registration under L. C. A. (see *post*, pp. 341 *et seq.*), if capable of registration thereunder. (Sect. 72 (2).)

A disposition under S. L. A. operates to overreach an annuity within the meaning of Part II. of L. C. A., and a limited owner's charge or a general equitable charge (see L. C. A. ss. 4 and 10, *post*); although registered under L. C. A. they will take effect as if limited by the settlement. (Sect. 72 (3).)

PART III.

Investment or other Application of Capital Money.

(Sects. 73 to 82.)

Modes of investment or application.—Sect. **73** replaces sects. 21 and 23 of S. L. A. 1882, and sect. 1 of S. L. A. 1887, and adds considerably to the authorised methods of applying capital money.

In the list which is given below, numbers (vi), (vii), (viii), (ix), (xiv), (xv), (xvi) and (xviii) are new, but it is declared by para. 10 of the 4th Schedule that capital money is to be deemed always to have been capable of being applied in any of the modes mentioned in numbers (xiii) to (xvi) inclusive, and also in paying any increment value duty which a tenant for life had power to charge on the settled land under sect. 39 of the Finance (1909—10) Act, 1910, and any reversion duty, and any costs and expenditure incurred by the tenant for life, or the trustees of the settlement, in connexion with any valuation under the said Act, or with the assessment and ascertainment of the amount of any increment value duty which a tenant for life had power to charge as aforesaid, or any reversion duty.

The list is as follows:—

(i) In investment in Government securities, or in other securities in which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, with power to vary the investment into or for any other such securities;

(ii) In discharge, purchase, or redemption of incumbrances affecting the whole estate the subject of the settlement, or of land tax, rent-charge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land, or of any charge in respect of an improvement created on a holding under the Agricultural Holdings Act, 1923, or any similar previous enactment;

(iii) In payment for any improvement authorised by this Act;

(iv) In payment as for an improvement authorised by this Act of any money expended and costs incurred by a landlord under or in pursuance of the Agricultural Holdings Act, 1923, or any similar previous enactment, or under custom or agreement or otherwise, in or about the execution of any improvement comprised in Part I. or Part II. of the First Schedule to the said Agricultural Holdings Act;

(v) In payment for equality of exchange of settled land;

(vi) In discharge of any fines payable in respect of the alienation of any settled land affected by manorial incidents;

(vii) In payment of the gross sum or an instalment thereof payable as compensation for the extinguishment of manorial incidents affecting the settled land, and for the acquisition of any mines, minerals, and other rights of the lord, or the

owner of the land affected by the manorial incidents, and for the compensation of the steward;

(viii) In redemption of any compensation rent-charge created in respect of the extinguishment of manorial incidents, and affecting the settled land;

(ix) In commuting any additional rent made payable on the conversion of a perpetually renewable leasehold interest into a long term, and in satisfying any claim for compensation on such conversion by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or underlessee on any renewal;

(x) In purchase of the freehold reversion in fee of any part of the settled land, being leasehold land held for years;

(xi) In purchase of land in fee simple, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land;

(xii) In purchase either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes;

(xiii) In redemption of an improvement rent-charge, that is to say, a rent-charge (temporary or permanent) created, whether before or after the commencement of this Act, in pursuance of any Act of Parliament, with the object of paying off any money advanced for defraying the expenses of an improvement of any kind authorised by Part I. of the Third Schedule to this Act;

(xiv) In the purchase, with the leave of the Court, of any leasehold interest where the immediate reversion is settled land, so as to merge the leasehold interest (unless the Court otherwise directs) in the reversion, and notwithstanding that the leasehold interest may have less than sixty years to run;

(xv) In payment of the costs and expenses of all plans, surveys, and schemes, including schemes under the Town Planning Act, 1925, or any similar previous enactment, made with

a view to, or in connexion with the improvement or development of the settled land, or any part thereof, or the exercise of any statutory powers, and of all negotiations entered into by the tenant for life with a view to the exercise of any of the said powers, notwithstanding that such negotiations may prove abortive, and in payment of the costs and expenses of opposing any such proposed scheme as aforesaid affecting the settled land, whether or not the scheme is made;

(xvi) In the purchase of an annuity charged under section four of the Tithe Act, 1918, on the settled land or any part thereof, or in the discharge of such part of any such annuity as does not represent interest;

(xvii) In payment to a local or other authority of such sum as may be agreed in consideration of such authority taking over and becoming liable to repair a private road on the settled land or a road for the maintenance whereof a tenant for life is liable *ratione tenuræ*;

(xviii) In financing any person who may have agreed to take a lease or grant for building purposes of the settled land, or any part thereof, by making advances to him in the usual manner on the security of an equitable mortgage of his building agreement;

(xix) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge;

(xx) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Act including the costs and expenses incidental to any of the matters referred to in this section;

(xxi) In any other mode authorised by the settlement with respect to money produced by the sale of the settled land.

But land outside England and Wales cannot be bought with capital money arising from settled land in England or Wales, unless the settlement expressly authorises it. (Sect. 73 (2).)

Purchase, &c. of land subject to rent, &c.—Land may be acquired on a purchase or exchange to be made subject to a settlement, although it is subject to a Crown rent, quit or chief rent, or to an easement or restrictive covenant or liability to repair walls, &c.,

or to an improvement rent-charge. (Sect. **74** (1).) A purchase or exchange of such land before the Act is confirmed. (Sect. 74 (2).)

Investment, devolution, &c. of capital money.—Sect. **75** repeats sect. 22 of S. L. A. 1882, and sect. 14 of S. L. A. 1890, without alteration. Capital money is to be paid to the trustees or into Court, at the option of tenant for life, who may direct how it shall be applied, &c., &c.

Money in Court under Lands Clauses and other Acts which is liable to be laid out in the purchase of land to be settled, may be invested or applied as capital money. So says sect. **76**, repeating sect. 32 of S. L. A. 1882.

Money in hands of trustees under powers of settlement.—Sect. **77** replaces sect. 33 of S. L. A. 1882, with an addition. Money in the hands of trustees which is liable to be laid out in land to be settled on the trusts of the instrument can be applied as capital money if the tenant for life chooses. This was so under the old section, but under the new section, if the instrument comes into operation after 1925, the provision applies also to money or securities or the proceeds of sale of any property held by trustees on trusts creating an entailed interest. (Cp. L. P. A. s. 130 (1), *ante*.)

Personalty settled by reference to capital money.—Where money or securities or proceeds of sale is or are by any instrument, whenever made, directed to be held on trusts declared by reference to capital money arising under the Act, the money, &c. must be held on the like trusts as if it were money which had actually arisen under the Act from settled land (sect. **78** (1)); and if by an instrument coming into operation after the Act, such property is directed to be held on trusts corresponding with the limitations of settled land, it must be treated as capital money. (Sect. 78 (2).) Compare L. P. A. s. 130 (3), *ante*.) Such money, &c. is to be transferred to the trustees of the settlement or into Court. (Sect. 78 (3).) Where the settled land includes freehold land, the money, &c. is to be held on the like trusts as if it represented capital money arising from the freehold land. (Sect. 78 (4).) This section is subject to the directions of the trust instrument, except that it is to have effect notwithstanding a direction that the trust property is not to vest absolutely in a tenant in tail who dies before a specified age or event. (Sect. 78 (5).)

Money arising from sale of lease or reversion.—Sect. **79** repeats sect. 34 of S. L. A. 1882 as to the apportionment of such money.

Damages received for breach of covenant.—Sect. **80** reverses the law of *Re Lacon*, (1911) 2 Ch. 17, and *Re Dealtry*, 108 L. T. 832, where it was held that damages paid by a lessee for breach of a covenant to repair are not capital, but belong to the tenant for life as a casual profit, whether his estate is legal or equitable. Sect. 80 (1) provides that money (not being rent) received after 1925 for breach of any covenant by a lessee or grantee is to be treated as capital money unless the Court otherwise directs. It may be applied in payment of the costs of making good the breach, and the trustees may, if they think fit, require it to be so applied. (Sect. 80 (2).)

The section does not apply to money paid for breach of a covenant to repay to the lessor or grantor money expended by him, nor to a case where, if the money were used to make good the breach, the settled land or buildings would not benefit. (Sect. 80 (4).) It applies whether the lease or grant was made before or after the Act, and whether under the powers conferred by the S. L. A. or not (sect. 80 (5)), but not if the settlement shows a contrary intention. (Sect. 80 (6).) The fact that the tenant for life takes his estate without impeachment of waste does not show a contrary intention. (*Ibid.*)

Capital arising otherwise than under the Act.—Capital money arising from settled land otherwise than under the Act, which ought to be treated as capital, is to be treated in future as capital money under the Act (sect. **81**), and past treatment of it as such is confirmed. (4th Sched. para. 11.)

Land acquired may be made a substituted security for released charges.—By sect. **82**, land acquired by purchase or in exchange or otherwise under the powers of this Act, may be made a substituted security for any charge from which the settled land or any part thereof has theretofore been released on the occasion and in order to the completion of a sale, exchange or other disposition. But where a charge does not affect the whole of the settled land, the land acquired is not to be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange of land which was before the exchange subject to the charge.

On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any legal estate or charge by way of legal mortgage, is not concerned to inquire whether or not it is proper that the land should be subjected to such legal estate or charge.

PART IV.

Improvements. (Sects. 83 to 89.)

Improvements with Capital Money. (Sects. 83 to 86.)

Authorised improvements.—These are set out in the 3rd Schedule, *post*, p. 290. Any operation incident to or necessary or proper in the execution of any of the works mentioned, or necessary or proper for carrying into effect any of the purposes mentioned, or for securing the full benefit of any of those works or purposes, is to be treated as an improvement. (Sect. **83.**) It may be added that the Act adds to the list of authorised improvements, (i) residential houses for persons employed on the settled land; (ii) permanent buildings for management or development; (iii) development of the land as a building estate; (iv) restoration of buildings damaged by dry rot; (v) structural additions and alterations to buildings reasonably required, though the buildings are not intended to be let or are already let; (vi) boring for water; (vii) heating, hydraulic or electric power for buildings; (viii) engine houses, &c. for installing electric, gas or other artificial light in a house or buildings, but not electric lamps, gas fittings or decorative fittings; (ix) steam rollers, traction engines, &c. for farming or other purposes.

In the first six cases the trustees or the Court *may* require the costs to be replaced by instalments out of the income of the settled land, and in the last three cases they *must* require it. (Sect. 84 (2).)

It must be remembered that the tenant for life is given an entirely new power to mortgage to raise any money required for an improvement authorised by the Act or the settlement and the costs of the mortgage. The money raised will be capital. (Sect. 71, *ante*.)

Procedure.—The procedure to obtain an application of capital money in paying for an improvement is altered by sects. **84** and **85**; sect. 26 of S. L. A. 1882 being repealed by L. P. A. 1922. No scheme need be submitted to the trustees or the Court.

(Sect. 84 (1).) If the trustees have the money, they may apply it (i) on a certificate made by a competent engineer or able practical surveyor employed independently of the tenant for life, or (ii) on an order of the Court. But in the case of improvements not authorised by Part I. of the 3rd Schedule, or by the settlement, the trustees may require repayment out of income by not more than fifty half-yearly instalments, and must do so if required by the Court. In the case of improvements not authorised by Part I. or Part II. of the Schedule, or by the settlement, there must be this repayment. (Sect. 84 (2).) The tenant for life may create a rent-charge in favour of the trustees to discharge the instalments. (Sect. 85 (1).)

If the capital money is in Court, the Court may order it to be applied on a report or certificate of the Minister of Agriculture and Fisheries, or of a competent engineer or able practical surveyor, or such other evidence as the Court thinks fit. (Sect. 84 (3).) The Court may order repayment to the trustees out of income by a fixed number of periodical instalments in the case of improvements not authorised by Part I. of the Schedule or by the settlement, and must do so in the case of improvements not authorised by Part I. or Part II., or by the settlement (sect. 84 (4)), and when such an order is made the land will stand charged with a yearly rent-charge taking effect as if limited by the settlement prior to the estate of the tenant for life. (Sect. 85 (2).)

A rent-charge created under sect. 85 cannot be redeemed out of capital money, but may be overreached as if it were limited by the settlement. It ceases when the land affected by the improvement ceases to be settled or is sold or exchanged. (Sect. 85 (3).)

Money received by the trustees in respect of any instalment is capital, unless the Court otherwise directs. (Sect. 84 (5).)

Sundry Provisions as to Improvements. (Sects. 86 to 89.)

Concurrence in improvements.—The tenant for life may concur with others in executing improvements. (Sect. **86**, repeating sect. 27 of S. L. A. 1882.)

Court may order payment for an authorised improvement, although it was effected before 1926 without submitting a scheme. This may be done though no capital money is immediately available for the purpose. (Sect. **87**, repeating sect. 15 of S. L. A. 1890, with the addition of the last sentence.)

Obligation on tenant for life and his successors to maintain, insure, &c.—This remains under sect. **88** of the new Act as it was under sect. 28 of S. L. A. 1882, and sect. 1 of S. L. A. 1887.

Protection as regards waste in execution and repair of improvements is provided for by sect. **89**, as it was by sect. 29 of S. L. A. 1882.

PART V.

MISCELLANEOUS PROVISIONS. (Sects. 90 to 93.)

Contracts.—Sect. **90**, replacing sect. 31 of S. L. A. 1882, gives a tenant for life power to contract to make any authorised disposition, to vary or rescind such contract, &c., &c. There is no substantial change. The new section is adapted to meet the alterations effected by the rest of the Act, and a general clause is placed at the end stating that all money, not being rent, received through the exercise of the powers under the section (*e.g.*, money paid to tenant for life as consideration for his accepting a surrender of a contract for a lease or grant in fee simple) is capital, unless the Court otherwise declares on application within six months or extended time. (Cp. sect. 52 (7), *ante*.)

"Aggregate estate."—Sect. **91** contains new and lengthy provisions with regard to two (or more) estates settled by different settlements upon the same limitations. They *may* be treated as one aggregate estate, the advantage of which will be mainly that capital money arising from one of the estates may be applied as if it had arisen from the other. If the same persons are trustees of both settlements they will be trustees of the aggregate estate. Provision is made by the section as to what is to happen if there are different trustees. The section is purely permissive.

Proceedings for protection or recovery of settled land may be approved by the Court, and the costs directed to be paid out of the settled property. This is sect. 36 of S. L. A. 1882, replaced by sect. **92.**

Reference of questions to Court.—Sect. 44 of S. L. A. 1882 re-appears in an extended form in sect. **93.** Application can be made to the Court to settle questions or doubts (1) respecting the exercise of the statutory powers; (2) as to the person in whose favour a vesting deed or assent ought to be executed or as to its contents; or (3) arising otherwise in relation to settled property; and the Court can also be asked (4) to sanction a conditional contract.

PART VI.

GENERAL PROVISIONS AS TO TRUSTEES. (Sects. 94 to 102.)

Number of trustees to act.—Capital money cannot be paid to fewer than two trustees unless the trustee is a trust corporation. This is so even if the settlement expressly authorises one trustee to receive the money. (Sect. **94**, altering in the latter respect sect. 39 of S. L. A. 1882.) The provision allowing the Public Trustee or a trust corporation to act as sole trustee operates retrospectively. (4th Sched. para. 12. See also sect. 18 (1) (c), *ante*. Cp. sect. 27 (2) of L. P. A., *ante*, and sect. 14 (2) of T. A., *post*.)

Trustees' receipts.—Sect. **95** re-enacts sect. 40 of S. L. A. 1882 as to the trustees' receipt being a good discharge, with the exception that a receipt cannot be given by one trustee even if the settlement empowers him to act, unless the trustee is a trust corporation.

Protection of each trustee individually.—There is not a word new in sect. **96**; it merely repeats sect. 41 of S. L. A. 1882. A trustee is liable only for his own acts, receipts and defaults.

Protection of trustees generally.—Sect. 42 of S. L. A. 1882 re-appears with no substantial alteration in sect. **97.** But see next section.

Protection of trustees in particular cases.—Sect. **98** extends the protection afforded to trustees by the previous section. Where the tenant for life or statutory owner directs capital money to be invested on any authorised security or investment the trustees will not be liable for the acts of any agent employed by him or for not employing a separate valuer or solicitor or for the form of the security. (Sect. 98 (1).) This modifies the law of *Re Hotham*, (1902) 2 Ch. 575, and *Re Theobald*, 19 T. L. R. 536. Nor are they liable for applying capital money by the direction of the tenant for life or statutory owner for any authorised purpose (sect. 98 (2)), or for allowing him to have the vesting instrument or other title deeds, other than securities for money; but where, if the settlement were not disclosed, he would appear to be absolute owner, they must before handing over the title deeds require notice of the last or only principal vesting instrument to be indorsed on one of the documents. (Sect. 98 (3).)

This section applies retrospectively. (Sect. 98 (4).)

Indemnities to personal representatives, trustees, &c.—A personal representative, trustee, or other person who has in good faith executed a vesting deed, assent, or other conveyance of the settled land, or a deed of discharge of trustees (see sect. 35, *ante*) is freed from liability to the persons equitably entitled, and is to be indemnified out of the trust estate from all liabilities affecting the settled land. (Sect. **99.**)

Trustees' reimbursement.—Trustees of a settlement may reimburse themselves or pay or discharge out of the trust property all expenses properly incurred. (Sect. **100**, repeating sect. 43 of S. L. A. 1882.)

Notice to trustees.—There is nothing new in the provisions as to notice, formerly contained in sect. 45 of S. L. A. 1882, and sect. 5 of S. L. A. 1884, but now in sect. **101,** except that there must be two trustees to receive the notice, unless a sole trustee is a trust corporation, even though a contrary intention is expressed in the settlement; and that words have been inserted to make it clear that notice of intention to grant an option (see sect. 51, *ante*) must be given. The power to give a general notice is retained so far as concerns sales, exchanges, leases and grants of options, but as before particular notice is required to make a mortgage or charge. Leases for twenty-one years or less at the best rent without fine and whereby the lessee is not exempted from punishment for waste may still be made without notice. (Sect. 42 (5).)

Management of land during minority or pending contingency.—Sect. **102** replaces sect. 42 (1) (2) (3) and (7) of C. A. 1881, with three alterations:—(1) The powers of management are, in default of persons specially appointed for the purpose by the settlement, exercisable by the trustees of settlement as defined by this Act (see sect. 30, *ante*), unless the settlement or the order of Court whereby they or their predecessors in office were appointed expressly provides to the contrary. This reverses *Re Helyar*, (1902) 1 Ch. 391.

(2) The section applies though the person entitled is a married woman, thus incorporating the amendment made by sect. 14 of C. A. 1911.

(3) The section applies, subject to any prior interests or charges, where any person is contingently entitled to land although he is not an infant. The trustees' powers continue until his interest vests, or, if his interest vests during his minority, until he attains

majority. But this extension of the section is only applicable where the contingent interest is acquired under an instrument coming into operation after 1925. (Sect. 102 (5).)

PART VII.

Restrictions, Savings and Protection of Purchasers. (Sects. 103 to 112.)

Bankruptcy of life tenant.—The legal estate in settled land is not to vest in the trustee in bankruptcy of an estate owner unless and until the estate owner becomes absolutely and beneficially entitled free from all limitations, powers, and charges under the settlement. (Sect. **103.**) As to the rights of the trustee in bankruptcy, see sect. 104, *infra*.

Assignment of life interest.—Sect. 50 of S. L. A. 1882, as explained by sect. 4 of S. L. A. 1890, is replaced by sect. **104,** with the following important amendments:—

(1) A tenant for life's powers do not pass from him on assignment of his estate or interest under the settlement, even though his estate or interest was not in possession when the assignment was made or took effect by operation of law. (Sect. 104 (1). Cp. sect. 19 (4), *ante*.) Sect. 50 of S. L. A. 1882 is deemed always to have applied to an assignment made when the estate was not in possession, or effected by operation of law. (4th Sched. para. 13.)

(2) In the case of assignments for value made before 1926, though the consent of the assignee is still necessary to the exercise by the tenant for life of his powers (except the power to make certain leases while he remains in possession, or to have capital money invested in trust securities), yet a purchaser, after 1925, is not concerned to see or inquire whether the consent of the assignee has been obtained. On the exercise of the statutory powers the assignee's rights will attach to the land, money or securities for the time being representing the land, &c. comprised in the assignment. (Sect. 104 (3) and (5).)

(3) In the case of assignments for value made or coming into operation after 1925, the assignee's consent will not be necessary to the exercise of any powers by the tenant for life. The assignee is, however, protected by the following provisions:—(a) His rights will attach to the land,

money or securities for the time being representing the land, &c. comprised in the assignment. (b) If the assignment so provides or if it takes effect through bankruptcy, the trustees, after notice of the assignment, must obtain the assignee's consent to the application of capital money for anything except an investment in trust securities. (c) Notice of the intended transaction must, unless the assignment otherwise provides, be given to him, though a purchaser is not concerned to see or inquire whether such notice has been given. (Sect. 104 (4).)

(4) Where the assignee for value is a trustee or personal representative, he can give the above-mentioned consents and bind his beneficiaries thereby (sect. 104 (6)); and has always had power to do so. (4th Sched. para. 13.) Where he is an infant, his parents or parent or testamentary or other guardian may assent in the order named. (Sect. 104 (8).) And provision is made for assent in special cases of difficulty. (*Ibid.* (7) and (9).)

(5) An assignment by operation of the law of bankruptcy where the assignment comes into operation after 1925 is an assignment for value within the section. (*Ibid.* (10).) So that what is said in paragraph (3) above will apply. The legal estate does not vest in the trustee in bankruptcy. (Sect. 103, *ante*.)

(6) "Assignee for value" includes persons deriving title under the original assignee, and is deemed always to have included them. (4th Sched. para. 13.) As to the rights of a purchaser of the life estate to collect the rents and with regard to the title deeds, see sect. 111, *post*.

Surrender to next remainderman.—The fact that, under sect. 50 of S. L. A. 1882, now replaced by sect. 104, above, the powers of a tenant for life cannot be assigned or released has sometimes caused difficulty in practice when the tenant for life has surrendered his life interest. Sect. **105** provides that, where the estate of the tenant for life is absolutely assured to the person next entitled in reversion or remainder with intent to extinguish the same, his statutory powers shall cease if and when the reversioner or remainderman would have the statutory powers if the tenant for life were dead. The section applies whether or not any term of years or charge intervenes, or the estate of the remainderman or reversioner is liable to be defeated,

and whether or not the estate or interest of the tenant for life under the settlement was in possession at the date of the assurance. Thus, if land is limited to A. for life, then to B. for life, then to C. for life, and B. surrenders to C., C. will have the statutory powers on A.'s death, although B. may be still alive. But any incumbrance affecting B.'s estate is not to be prejudiced, and the incumbrancer is to have the same rights as if the statutory powers had remained exercisable by B. (See sect. 104, above.)

The section applies whether the assurance was made before or after the Act, but not in the former case so as to prejudice acts already done by the tenant for life.

Prohibition against exercise of statutory powers void.—The provisions of sects. 51 and 52 of S. L. A. 1882, making void attempts to prevent a tenant for life from exercising his statutory powers, are repeated in sect. **106** and made to apply to any matter which might induce him not to exercise his right to require the settled land to be vested in him.

Tenant for life a trustee for all parties interested.—Sect. **107** repeats sect. 53 of S. L. A. 1882, and incorporates sect. 7 (2) of the Housing, Town Planning, &c. Act, 1909, to the effect that the provision by a tenant for life or statutory owner, at his own expense, of working class dwellings on any settled land is not to be deemed an injury to any interest in reversion or remainder, but such provision cannot be made without the previous approval in writing of the trustees of the settlement.

Saving for other powers.—Sect. **108** replaces sect. 56 of S. L. A. 1882, which prevents the Act from taking away any other powers given to the tenant for life by the settlement or by statute. But there is an important alteration as regards powers relating to the settled land conferred on the trustees of the settlement or any other person (not being merely a power of revocation or appointment). Such a power is not to be exercisable by the trustees or other person even with the consent of the tenant for life, but may be exercised by the tenant for life or statutory owner as if it were an additional power given to him by the settlement. (See sect. 109, below.) Under sect. 56, such powers could be exercised without consent so far as they did not conflict with the statutory powers, and with the consent of the tenant for life if they did conflict.

Saving for additional powers.—The Act does not prevent additional or larger powers being conferred by the settlement on

the tenant for life, or (subject to the preceding section) on the trustees. (Sect. **109** replacing sect. 57 of S. L. A. 1882.)

Protection of purchasers of settled land.—Sect. **110** repeats sect. 54 of S. L. A. 1882, to the effect that a purchaser dealing in good faith with the tenant for life is to be conclusively taken to have given the best price, &c., and it contains much wider provisions to protect a purchaser of a legal estate in settled land.

He is not bound or entitled to call for information as to the trust deed or any *ad valorem* stamp duty thereon, with the one exception that he is sometimes concerned to see the first vesting instrument. (See below.) With this one exception, he must assume, if the last or only principal vesting instrument contains the required statements and particulars (see sect. 5, *ante*), that—

(a) the person in whom the land is thereby stated to be vested has all the powers under the Act;

(b) the persons thereby stated to be the trustees of the settlement, or their successors appearing to be duly appointed, are the properly constituted trustees of the settlement;

(c) the statements and particulars required by the Act and contained expressly or by reference in the said instrument were correct;

(d) the statements contained in any deed executed in accordance with the Act declaring who are the S. L. A. trustees are correct;

(e) the statements contained in any deed of discharge, executed in accordance with the Act, are correct.

The one exception referred to above is as regards the first vesting instrument executed for the purpose of giving effect to (a) a settlement subsisting at the commencement of the Act (see sect. 37, and 2nd Sched., *ante*); or (b) an instrument which by virtue of the Act is deemed to be a settlement (see sect. 9, *ante*); or (c) a settlement which by virtue of this Act is deemed to have been made by any person after 1925 (see sect. 9, *ante*); or (d) an instrument *inter vivos* intended to create a settlement of a legal estate in land which is executed after 1925 and does not comply with the requirements of the Act with respect to the method of effecting such a settlement. (See sect. 9, *ante*.)

In these cases, a purchaser must see—

(i) that the land disposed of to him is comprised in such settlement or instrument;

(ii) that the person in whom the settled land is by such vesting instrument vested, or declared to be vested, is the person in whom it ought to be vested as tenant for life or statutory owner;

(iii) that the persons thereby stated to be the trustees of the settlement are the properly constituted trustees of the settlement. (Sect. 110 (2).)

Sub-sect. (3) of the same section provides that a purchaser of a legal estate in settled land from a personal representative may act on the following assumptions:—

(i) If the capital money, if any, payable in respect of the transaction is paid to the personal representative, that such representative is acting under his statutory or other powers and requires the money for purposes of administration;

(ii) If such capital money is, by the direction of the personal representative, paid to persons who are stated to be the trustees of a settlement, that such persons are the duly constituted trustees of the settlement for the purposes of the Act, and that the personal representative is acting under his statutory powers during a minority;

(iii) In any other case, that the personal representative is acting under his statutory or other powers.

Sub-sect. (4) of sect. 110 provides that where no capital money arises under a transaction (*e.g.*, in the case of an occupation lease made without fine), a disposition by a tenant for life or statutory owner will, in favour of a purchaser of a legal estate, have effect, although at the date of the transaction there are no trustees of the settlement.

If a conveyance of or an assent relating to land formerly subject to a vesting instrument does not state who are the S. L. A. trustees, a purchaser of a legal estate must assume that the person in whom the land was thereby vested was entitled to the land free from all limitations, powers, and charges taking effect under that settlement, absolutely and beneficially, or, if so expressed in the conveyance or assent, as personal representative, or trustee for sale or otherwise, and that every statement of fact in such conveyance or assent is correct. (Sect. 110 (5).)

Purchaser of beneficial interest of tenant for life to have remedies of a legal owner.—Where a tenant for life has assigned his life interest before 1926, or assigns it afterwards, the interest

of the assignee will after 1925 be equitable only. So that the Act may not prejudice a purchaser of the life interest, sect. **111** provides that where (a) at the commencement of the Act the legal beneficial interest of a tenant for life is vested in a purchaser; or (b) after the commencement of the Act a tenant for life conveys or deals with his beneficial interest in possession in favour of a purchaser, and the interest so conveyed or created would, but for the restrictions imposed by statute on the creation of legal estates (see sect. 1 of L. P. A., *ante*), have been a legal interest; the purchaser shall (without prejudice to the powers conferred by the Act on the tenant for life (see sect. 104, *ante*)) have and may exercise all the same rights and remedies as he would have had or have been entitled to exercise if the interest had remained or been a legal interest and the reversion, if any, on any leases or tenancies derived out of the settled land had been vested in him.

But where the conveyance or dealing is effected after 1925, the purchaser will not be entitled to the possession of the title deeds relating to the settled land, but will have the same rights as if the tenant for life had given him the statutory acknowledgment and undertaking. (See sect. 64 of L. P. A., *ante*.) The tenant for life is not to deliver the title deeds to a purchaser merely of his beneficial interest.

Execution of conveyances, &c.—Sect. **112** merely repeats sect. 55 (2) and (3) of S. L. A. in authorising the person exercising the powers given by the Act to execute all necessary deeds, &c., and in stating that references to sales, &c. in the Act extend only to sales, &c. under the Act unless the contrary appears.

PART VIII.

COURT, MINISTRY OF AGRICULTURE AND FISHERIES, PROCEDURE. (Sects. 113 to 116.)

Jurisdiction and procedure.—There is little new in sect. **113**, which replaces sect. 46 of S. L. A. 1882. Matters under the Act are assigned to the Chancery Division, though as regards land in the Counties Palatine jurisdiction may be exercised by the Chancery Courts of Lancaster and Durham, and the same limited jurisdiction as before is given to the County Courts. Applications in the Chancery Division must be by originating summons—no mention is made of petition as there was in the former section.

Payment of costs out of settled property.—Sect. **114** replaces, without material change, sect. 47 of S. L. A. 1882.

Powers of Minister of Agriculture, conferred by sect. 48 (6) of S. L. A. 1882, are re-conferred by sect. **115**; and sect. **116** repeats the provision of sect. 49 of S. L. A. 1882, that certificates and reports approved and made by the Minister under the Act shall be filed at the Ministry, and office copies shall be delivered to persons requiring them on payment of the prescribed fee.

PART IX.

SUPPLEMENTARY PROVISIONS. (Sects. 117 to 120.)

Definitions.—Sect. **117** provides that:—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

(i) "Building purposes" include the erecting and the improving of, and the adding to, and the repairing of buildings; and a "building lease" is a lease for any building purposes or purposes connected therewith;

(ii) "Capital money arising under this Act" means capital money arising under the powers and provisions of this Act or the Acts replaced by this Act, and receivable for the trusts and purposes of the settlement and includes securities representing capital money;

(iii) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on death;

(iv) "Determinable fee" means a fee determinable whether by limitation or condition;

(v) "Disposition" and "conveyance" include a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and "dispose of" and "convey" has corresponding meanings;

(vi) "Dower" includes "freebench";

(vii) "Hereditaments" mean real property which on an intestacy might before the commencement of this Act have devolved on an heir;

(viii) "Instrument" does not include a statute unless the statute creates a settlement;

(ix) "Land" includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and any estate or interest in land not being an undivided share in land;

(x) "Lease" includes an agreement for a lease, and "forestry lease" means a lease to the Forestry Commissioners for any purpose for which they are authorised to acquire land by the Forestry Act, 1919;

(xi) "Legal mortgage" means a mortgage by demise or subdemise or a charge by way of legal mortgage (see L. P. A. s. 87), and "legal mortgagee" has a corresponding meaning; "legal estate" means an estate interest or charge in or over land (subsisting or created at law) which is by statute authorised to subsist or to be created at law (see L. P. A. s. 1); and "equitable interests" mean all other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting at law" means such an equitable interest as could validly subsist at law, if clothed with the legal estate; and "estate owner" means the owner of a legal estate;

(xii) "Limitation" includes a trust, and "trust" includes an implied or constructive trust;

(xiii) "Lunatic" includes a lunatic whether so found or not and in relation to a lunatic not so found, "committee" includes a person on whom the powers of a committee are conferred under section one of the Lunacy Act, 1908; and "defective" means every person affected by the provisions of section one hundred and sixteen of the Lunacy Act, 1890, as extended by section sixty-four of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed;

(xiv) "Manor" includes lordship, and reputed manor or lordship; and "manorial incident" has the same meaning as in the Law of Property Act, 1922;

(xv) "Mines and minerals" mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and "mining purposes" include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes; and a "mining lease" is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes;

(xvi) "Minister" means the Minister of Agriculture and Fisheries;

(xvii) "Notice" includes constructive notice;

(xviii) "Personal representative" means the executor, original or by representation, or administrator, for the time being of a deceased person, and where there are special personal representatives for the purposes of settled land means those personal representatives;

(xix) "Possession" includes receipt of rents and profits, or the right to receive the same, if any; and "income" includes rents and profits;

(xx) "Property" includes any thing in action, and any interest in real or personal property;

(xxi) "Purchaser" means a purchaser in good faith for value, and includes a lessee, mortgagee or other person who in good faith acquires an interest in settled land for value; and in reference to a legal estate includes a chargee by way of legal mortgage;

(xxii) "Rent" includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, "payment" includes delivery; and "fine" includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift;

(xxiii) "Securities" include stocks, funds, and shares;

(xxiv) "Settled land" includes land which is deemed to be settled land; "settlement" includes an instrument or instruments which under this Act or the Acts which it replaces is or are deemed to be or which together constitute a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of this Act; "a settlement subsisting at the commencement of this Act" includes a settlement created by virtue of this Act immediately on the commencement thereof; and "trustees of the settlement" means the trustees thereof for the purposes of this Act howsoever appointed or constituted;

(xxv) "Small dwellings" means dwelling-houses of a rateable value not exceeding one hundred pounds per annum;

(xxvi) "Statutory owner" means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life;

(xxvii) "Steward" includes deputy steward, or other proper officer, of a manor;

(xxviii) "Tenant for life" includes a person (not being a statutory owner) who has the powers of a tenant for life under this Act, and also (where the context requires) one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life; and "tenant in tail" includes a person entitled to an entailed interest in any property; and "entailed interest" has the same meaning as in the Law of Property Act, 1925 (see L. P. A. s. 130);

(xxix) A "term of years absolute" means a term of years, taking effect either in possession or in reversion, with or without impeachment for waste, whether at a rent or not and whether subject or not to another legal estate, and whether certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest),

but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by statute to take effect within that period (see L. P. A. s. 149 (3)); and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

(xxx) "Trust corporation" means the public trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee, and "trust for sale" "trustees for sale" and "power to postpone a sale" have the same meanings as in the Law of Property Act, 1925;

(xxxi) In relation to settled land "vesting deed" or "vesting order" means the instrument whereby settled land is conveyed to or vested or declared to be vested in a tenant for life or statutory owner; "vesting assent" means the instrument whereby a personal representative, after the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, vests settled land in a person entitled as tenant for life or statutory owner; "vesting instrument" means a vesting deed, a vesting assent or, where the land affected remains settled land, a vesting order; "principal vesting instrument" includes any vesting instrument other than a subsidiary vesting deed; and "trust instrument" means the instrument whereby the trusts of the settled land are declared, and includes any two or more such instruments and a settlement or instrument which is deemed to be a trust instrument;

(xxxii) "United Kingdom" means Great Britain and Northern Ireland;

(xxxiii) "Will" includes codicil.

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the "creation" of an interest or power include any interest or power so arising.

(3) References to registration under the Land Charges Act, 1925, apply to any registration made under any statute which is by the Land Charges Act, 1925, to have effect as if the registration had been made under that Act.

Retrospective amendment of certain provisions of S. L. A.—These are made by sect. **118** by reference to the 4th Schedule. They have all been referred to *ante* in connection with the various provisions of the Act.

Repeals, &c.—The Acts set out in the 5th Schedule are repealed, with the usual saving clause. (Sect. **119**.)

Registered land.—As respects registered land, the Act takes effect subject to the provisions of L. R. A., *post*. (Sect. 119 (3).)

Short title, &c.—The Act may be cited as the Settled Land Act, 1925, is to come into operation on 1st January, 1926, and extends only to England and Wales. (Sect. **120**.)

FIRST SCHEDULE.

Forms of Instruments.

Form No. 1.

Vesting Deed for giving effect to a Settlement subsisting at the Commencement of this Act.

This Vesting Deed is made [&c.] between *X.* of [&c.] and *Y.* of [&c.] (hereinafter called the trustees) of the one part and *T. L.* of [&c.] of the other part.

[*Recite the Settlement under which T. L. is a tenant for life of full age in possession of the freeholds and leaseholds respectively described in the First and Second Schedules and has power to appoint new trustees, and the trustees are trustees for the purposes of the Settled Land Act*, 1925, *also the request by T. L. that the trustees should execute the requisite vesting deed.*]

Now for giving effect to the requirements of the Settled Land Act, 1925, this deed witnesseth as follows:—

1. The trustees as Trustees hereby declare that—

All and singular the hereditaments and premises respectively mentioned in the First and Second Schedules hereto and all other

(if any) the premises capable of being vested by this declaration which are now by any means subject to the limitations of the recited settlement are vested in the said *T. L.* as to the freehold hereditaments mentioned in the First Schedule hereto in fee simple, and as to the leasehold hereditaments mentioned in the Second Schedule hereto, for all the residue of the terms of years for which the same are respectively held.

2. The said *T. L.* shall stand possessed of the premises upon the trusts and subject to the powers and provisions upon and subject to which under the recited settlement or otherwise the same ought to be held from time to time.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

4. The following additional or larger powers are conferred by the said settlement in relation to the settled land, and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Here insert the additional powers.*]

5. [*Add the usual covenant by T. L. with the trustees to pay the rent in respect of leasehold hereditaments, observe the lessee's covenants and keep the trustees indemnified.*]

6. The power to appoint a new trustee or new trustees of the settlement is vested in the said *T. L.* during his life.

In witness [&c.].

[NOTE.—Add the schedules. In the first part of the First Schedule give particulars of the manors, advowsons and other incorporeal hereditaments. In the second part give particulars of the freehold land referring, if practicable, to annexed plans, so that the vesting deed may ultimately become a convenient root of title. Unless this is done the deeds referred to will for purposes of the parcels remain part of the title. In the Second Schedule give particulars of the dates of and parties to the leases of the leasehold hereditaments, and short particulars of the properties demised, the terms and the rents. If there are any mortgages having priority to the settlement these should be mentioned in another schedule and referred to in the recitals.]

FORM No. 2.

Vesting Deed on the Settlement of Land.

This Vesting Deed made [&c.] between *John H.* of [&c.] of the first part, *Jane W.* of [&c.] of the second part, and *X.* of [&c.], *Y.* of [&c.], and *Z.* of [&c.] (hereinafter called the trustees) of the third part.

Witnesseth and it is hereby declared as follows:—

1. In consideration of the intended marriage between *John H.* and *Jane W.* the said *John H.* as Settlor hereby declares that

All that (*setting out the parcels by reference to a schedule or otherwise*) are vested in *John H.* in fee simple (*or in the case of leaseholds refer to the terms*).

Upon the trusts declared concerning the same by a Trust Instrument bearing even date with but intended to be executed contemporaneously with these presents and made between the same parties and in the same order as these presents or upon such other trusts as the same ought to be held from time to time.

2. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

3. The following additional or larger powers are conferred by the said trust instrument in relation to the settled land and by virtue of the Settled Land Act, 1925, operate and are exercisable as if conferred by that Act on a tenant for life. [*Here insert the additional powers.*]

4. The power of appointing a new trustee or new trustees of the settlement is vested in the said [*John H.*] during his life.

In witness [&c.].

FORM No. 3.

Trust Instrument on the Settlement of Land.

This Trust Instrument is made [&c.] between *John H.* of [&c.] (hereinafter called the Settlor) of the first part, *Jane W.* of [&c.] of the second part, and *X.* of [&c.], *Y.* of [&c.], and *Z.* of [&c.] (hereinafter called the trustees) of the third part.

Whereas by a deed (hereinafter called the Vesting Deed) bearing even date with but executed contemporaneously with these presents, and made between the same parties and in the same order as these presents, certain hereditaments situated at in the county of

were vested in the Settlor Upon the trusts declared concerning the same by a trust instrument of even date therein referred to (meaning these presents).

Now in consideration of the intended marriage between the Settlor and *Jane W.*, this Deed witnesseth as follows:—

1. The Settlor hereby agrees that he will hold the hereditaments and property comprised in the Vesting Deed In trust for himself until the solemnisation of the said marriage and thereafter Upon the trusts following, that is to say:—

2. Upon trust for the Settlor during his life without impeachment of waste with remainder Upon trust if *Jane W.* survives him that she shall receive out of the premises during the residue of her life a yearly jointure rent-charge of [&c.] and subject thereto Upon trust for the trustees for a term of 800 years from the date of the death of the Settlor without impeachment of waste Upon the trusts hereinafter declared concerning the same. And subject to the said term and the trusts thereof Upon trust for the first and other sons of the said intended marriage successively according to seniority in tail male with remainder [&c.] *with an ultimate remainder in trust for the Settlor in fee simple.*

[*Here add the requisite trusts of the portions term, and any other proper provisions including the appointment of the trustees to be trustees of the settlement for the purposes of the Settled Land Act,* 1925, *extension of Settled Land Act powers, and a power for the tenant for life for the time being of full age to appoint new trustees of the settlement.*]

In witness [&c.].

[NOTE.—The Vesting Deed and the Trust Instrument can be executed as escrows till the marriage.]

FORM NO. 4.

Subsidiary Vesting Deed on Sale when the Land is Purchased with Capital Money.

This Subsidiary Vesting Deed is made [&c.] between *Henry V.* of [&c.] (hereinafter called the Vendor) of the first part, *X.* of [&c.], *Y.* of [&c.], and *Z.* of [&c.] (hereinafter called the trustees) of the second part, and *John H.* [&c.] (hereinafter called the Purchaser) of the third part.

Whereas the Vendor is entitled for an estate in fee simple in possession free from incumbrances to the hereditaments hereinafter conveyed and has agreed to sell the same to the purchaser at the price of pounds.

And whereas by a principal vesting deed (hereinafter called the principal deed) dated [&c.], and made [&c.] [*Form No.* 2], certain hereditaments were vested in the Purchaser Upon the trusts of a trust instrument of even date therewith, and by [endorsements on] the principal deed the trustees were stated to be the trustees of the settlement for the purposes of the Settled Land Act, 1925.

Now this Deed witnesseth as follows:—

1. In consideration of the sum of pounds now paid to the Vendor by the trustees by the direction of the Purchaser (the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys unto the Purchaser All those [&c.].

To hold unto the Purchaser [in fee simple] upon and subject to the same trusts and powers as are declared by the principal deed by reference as aforesaid with respect to the hereditaments therein comprised.

2 and 3. [*Same as 2 and 4 in Form No.* 2.]

In witness [&c.].

NOTE.—On a purchase of a term of years absolute out of capital money, the term must be conveyed to the tenant for life, if any, of full age, instead of to the trustees of the settlement. If there is a minority the land will be conveyed to the personal representatives or to the Settled Land Act trustees.

FORM No. 5.

Vesting Assent by Personal Representative.

1. *E. F.* of [&c.] and *G. H.* of [&c.] as the personal representatives of *X. Y.*, late of [&c.] deceased, do this day of 19 hereby, As Personal Representatives, assent to the vesting in *C. D.* of [&c.] of [All that farm &c.] *or* [All the property described in the Schedule hereto] for all the estate or interest of the said *X. Y.* at the time of his death [*or*, for an estate in fee simple].

2. The premises are vested in the said *C. D.* upon the trusts declared concerning the same by [&c.].

3. The said *E. F.* and *G. H.* are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

4 and 5. [*Same as* 3 *and* 4 *in Form No.* 2.]

As witness, &c.

NOTE.—The expression "conveyance" includes an assent, but an assent will relate back to the death unless a contrary intention appears.

An assent will not be properly postponed merely because death duty remains to be paid. The representatives have only to be satisfied (*e.g.* where the tenant for life has directed payment out of capital money or has executed a mortgage for raising the money as and when an instalment becomes due) that the duty will be paid.

SECOND SCHEDULE.

Transitional Provisions affecting Existing Settlements.

[This has been dealt with under sect. 37 of S. L. A. and sect. 39 of L. P. A., *ante*].

THIRD SCHEDULE.

PART I.

Improvements, the Costs of which are not liable to be replaced by Instalments.

(i) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses:

(ii) Bridges:

(iii) Irrigation; warping:

(iv) Drains, pipes, and machinery for supply and distribution of sewage as manure:

(v) Embanking or weiring from a river or lake, or from the sea, or a tidal water:

(vi) Groynes; sea walls; defences against water:

(vii) Inclosing; straightening of fences; re-division of fields:

(viii) Reclamation; dry warping:

(ix) Farm roads; private roads; roads or streets in villages or towns:

(x) Clearing; trenching; planting:

(xi) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not:

(xii) Farmhouses, offices, and outbuildings, and other buildings for farm purposes:

(xiii) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise:

(xiv) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption:

(xv) Tramways; railways; canals; docks:

(xvi) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:

(xvii) Markets and market-places:

(xviii) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land:

(xix) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid:

(xx) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines:

(xxi) Reconstruction, enlargement, or improvement of any of those works:

(xxii) The provision of small dwellings, either by means of building new buildings or by means of the reconstruction, enlargement, or improvement of existing buildings, if that provision of small dwellings is, in the opinion of the Court, not injurious to the settled land or is agreed to by the tenant for life and the trustees of the settlement:

(xxiii) Additions to or alterations in buildings reasonably necessary or proper to enable the same to be let:

(xxiv) Erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority,

or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof:

(xxv) The rebuilding of the principal mansion house on the settled land:

Provided that the sum to be applied under this head shall not exceed one-half of the annual rental of the settled land:

PART II.

Improvements, the Costs of which the Trustees of the Settlement or the Court may require to be replaced by Instalments.

(i) Residential houses for land or mineral agents, managers, clerks, bailiffs, woodmen, gamekeepers and other persons employed on the settled land, or in connexion with the management or development thereof:

(ii) Any offices, workshops and other buildings of a permanent nature required in connexion with the management or development of the settled land or any part thereof:

(iii) The erection and building of dwelling houses, shops, buildings for religious, educational, literary, scientific, or public purposes, market places, market houses, places of amusement and entertainment, gasworks, electric light or power works, or any other works necessary or proper in connexion with the development of the settled land, or any part thereof as a building estate:

(iv) Restoration or reconstruction of buildings damaged or destroyed by dry rot:

(v) Structural additions to or alterations in buildings reasonably required, whether the buildings are intended to be let or not, or are already let:

(vi) Boring for water and other preliminary works in connexion therewith.

PART III.

Improvements, the Costs of which the Trustees of the Settlement and the Court must require to be replaced by Instalments.

(i) Heating, hydraulic or electric power apparatus for buildings, and engines, pumps, lifts, rams, boilers, flues, and other works required or used in connexion therewith:

(ii) Engine houses, engines, gasometers, dynamos, accumulators, cables, pipes, wiring, switchboards, plant and other works required for the installation of electric, gas, or other artificial light, in connexion with any principal mansion house, or other house or buildings; but not electric lamps, gas fittings, or decorative fittings required in any such house or building:

(iii) Steam rollers, traction engines, motor lorries and moveable machinery for farming or other purposes.

FOURTH SCHEDULE.

RETROSPECTIVE AMENDMENTS OF THE SETTLED LAND ACTS, 1882 TO 1890.

[These are incorporated in various places in the text.]

FIFTH SCHEDULE.

ENACTMENTS REPEALED.

[See general Table of Repeals, *ante*, p. xiii.]

TRUSTEE ACT, 1925.

Various amendments of the Trustee Acts and other statutes containing provisions as to trustees were made by L. P. A. 1922 and 1924, partly to carry out the general scheme of L. P. A., and partly to increase the powers of trustees and shorten wills and settlements. The statutory provisions as to trustees are now consolidated by the Trustee Act, 1925—in this book cited simply as "T. A."—though it may be noted that sect. 8 of the Trustee Act, 1888 (giving power to trustees to plead the statutes of limitation) is still left outstanding. The bulk of the statute consists of old law, which is familiar to practitioners, and in what follows attention is mainly concentrated on the changes effected by the new legislation. The statute presents little difficulty, and comes as a welcome relief to the reader who has struggled through the new and strange technicalities of L. P. A. and S. L. A.

The Act contains 71 sections and two Schedules, and is arranged as follows:—

Part I.—Investments. (Sects. 1 to 11.)

Part II.—General Powers of Trustees and Personal Representatives. (Sects. 12 to 33.)

Part III.—Appointment and Discharge of Trustees. (Sects. 34 to 40.)

Part IV.—Powers of the Court. (Sects. 41 to 63.)

Part V.—General Provisions. (Sects. 64 to 71.)

Schedule I.—Retrospective amendments of the Trustee Act, 1893, and the enactments repealed by that Act.

Schedule II.—Enactments repealed.

PART I.

INVESTMENTS. (Sects. 1 to 11.)

Authorised investments.—Sect. **1**, replacing sect. 1 of T. A. 1893, contains the list of authorised investments. It differs from the old section in the following respects, the alterations being necessary to incorporate the amendments effected by subsequent legislation:—

(1) Irish Free State securities are excluded in accordance with the Irish Adaptation of Enactments Order.

(2) The expression "real securities" is made to include the security of a charge on freehold land by way of legal mortgage, so as to adapt the section to the new form of mortgage introduced by L. P. A. s. 87, and also a charge in respect of redeemed land tax, being authorised by sect. 33 of Finance Act, 1896.

(3) The clause as to India stocks has been redrafted. It now runs:—"In India Seven, Five and a half, Four and a half, Three and a half, Three and Two and a half per cent. stock, or in any other capital stock which may at any time be issued by the Secretary of State in Council of India under the authority of any Act of Parliament, and charged on the revenues of India, or any other securities the interest in sterling whereon is payable out of and charged on the revenues of India."

(4) Metropolitan Water stock is included, being authorised by Metropolis Water Act, 1902.

(5) The words "owning or operating a railway" are inserted in paragraphs (i) and (k), making it plain that these paragraphs apply, and always have applied (sect. 69 (3)), to companies operating, as well as to companies owning, railways in India.

(6) Colonial stocks authorised by Colonial Stock Act, 1900, are included.

(7) Local bonds issued under the Housing (Additional Powers) Act, 1919, and mortgages of any fund or rate granted after the passing of that Act under the authority of any Act or Provisional Order by a local authority (including a county council) which is authorised to issue local bonds under that Act, are included.

(8) Stock or securities issued in respect of any loan raised by the Government of Northern Ireland are included, being authorised by sect. 33 of Government of Ireland Act, 1920.

(9) The section includes the provisions of sect. 15 of the Railways Act, 1921, as to each of the amalgamated railway companies being treated as having paid a 3 per cent. dividend on its ordinary stock for each of the ten years preceding amalgamation. The date of amalgamation for this purpose is fixed, as respects the London and North-Eastern and the Southern, as January 1st, 1923; as respects the London, Midland and Scottish and the Great Western, as July 1st, 1923.

Real securities.—Sect. **5** replaces sect. 5 of T. A. 1893, with no alteration except that a trustee having power to invest in real securities may accept the security in the form of a charge by way of legal mortgage, and may, in exercise of the statutory power, convert an existing mortgage into a charge by way of legal mortgage. (See sect. 87 of L. P. A.)

Bearer securities.—Sect. 7 of T. A. 1893 is altered. Under that section a trustee could not invest in bearer securities issued under certain Acts unless he was authorised by the terms of his trust. Now, by sect. **7** of the new Act, a trustee may, unless expressly prohibited by the trust instrument, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments. But they must, until sold, be deposited for safe custody and collection of income with a bank, unless the trustee is a trust corporation.

A direction that investments shall be retained or made in the name of a trustee will not be deemed to be such an express prohibition as aforesaid.

A trustee will not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection is to be paid out of the income of the trust property.

Powers supplementary to powers of investment.—Sect. **10** gives trustees certain new powers supplementary to their existing powers of investment. They apply, like the rest of the Act, whenever the trust was created, but only so far as a contrary intention is not expressed in the trust instrument (if any). (Sect. 69.) The consent of any person whose consent to a change of investment

is necessary must be obtained to the exercise of the powers. (Sect. 10 (5).) These powers are:—

(1) To agree not to call in money lent during any period not exceeding seven years provided interest is paid within thirty days after it falls due and there is no breach of covenant for the maintenance and protection of the property. (Sect. 10 (1).)

(2) To allow two-thirds or less of the purchase-money due on a sale to remain on mortgage. The sale must be of the fee simple or a term of at least 500 years. No valuation need be obtained. This power is given also to a tenant for life or statutory owner. (Sect. 10 (2).)

(3) Where they lawfully hold securities of a company they may agree to a reconstruction or amalgamation of the company, or a sale to another company or a modification or release of rights attached to the securities, and may accept and retain any new securities in lieu of the old. (Sect. 10 (3).)

(4) If any preferential right to subscribe for any securities is offered to trustees in respect of their holding in a company, they may either (i) accept and pay for the securities out of capital, or (ii) renounce the right, or (iii) sell it as best they can to anyone, including a beneficiary. If they sell it, the consideration received will be capital. They will not be liable for any loss if they act in good faith. (Sect. 10 (4).)

Power to deposit money at bank and to pay calls.—By sect. 11 trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof must be applied as income. They may also apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

PART II.

General Powers of Trustees and Personal Representatives. (Sects. 12 to 33.)

General Powers. (Sects. 12 to 25.)

The powers conferred by the Act apply whenever the trust was created, but may be negatived or varied by the trust instrument, if any, except where the Act states otherwise. (Sect. 69.)

Sale.—Sect. 13 of T. A. 1893 (which gives various powers to trustees in connection with the exercise of a trust for sale or power of sale vested in them) reappears in sect. **12** with no alteration, except that (a) it applies whenever the instrument came into operation, whereas the former section only applied to instruments coming into operation after 1881; (b) it provides that a trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way (so that no leave to sell surface and minerals apart will be required after 1925); (c) it expressly states that it does not enable an express power to sell settled land to be exercised where the power is not vested in the tenant for life or statutory owner. (See sects. 108 and 109 of S. L. A., *ante*.)

Receipts.—The power of a trustee to give receipts, formerly contained in sect. 20 of T. A. 1893, reappears in sect. **14** with the addition of two clauses.

(1) Except where the trustee is a trust corporation, it does not enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for sale of land, or for capital money arising under S. L. A.

(2) The section applies notwithstanding anything to the contrary in the trust instrument, if any. (Cp. sect. 27 (2) of L. P. A., and sect. 94 of S. L. A.)

Compounding liabilities.—The power to compound, pay or allow debts, &c., formerly contained in sect. 21 of T. A. 1893, is reconferred by sect. **15,** with the addition of powers to (a) accept any property, real or personal, before the time at which it is made transferable or payable, and (b) sever and apportion any blended trust funds or property.

Raising money.—Sect. **16** is new. Where trustees are authorised by law or the trust instrument to apply capital money for any purpose, they have, and always have had, says the section, power to raise the money by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession. This applies, notwithstanding anything to the contrary in the trust instrument, if any, but it does not apply to charity trustees or S. L. A. trustees not being also the statutory owners.

Purchaser's protection.—A purchaser or mortgagee paying money to trustees on a sale or mortgage purporting to be made

under any trust or power vested in trustees is not concerned to see that the money is wanted or that no more than is wanted is raised or otherwise as to the application thereof. (Sect. **17.**) This is a new provision.

Devolution of powers or trusts.—Sect. 22 of T. A. 1893, and sect. 8 of C. A. 1911, reappear with amendments in sect. **18.** A power or trust given to or imposed on two or more trustees jointly may be exercised or performed by the survivor or survivors, and, until new trustees are appointed, the personal representative of a sole or last surviving or continuing trustee may exercise or perform any power or trust which the trustee could have exercised or performed. This is, however, subject to any contrary intention expressed in the trust instrument (sect. 69), and to the restriction on a sole trustee giving a receipt. (See *ante*, sect. 14.) Personal representative in the section does not include a renouncing or non-proving executor. The power of the personal representative to act as trustee is not confined to trusts created after 1881, as was the power given by sect. 8 of C. A. 1911.

Insurance money.—The power of insurance against fire given by sect. 18 of T. A. 1893, is repeated without alteration in sect. **19,** and a useful new provision is contained in sect. **20** with regard to the application of money receivable by trustees or a beneficiary under a policy of assurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of S. L. A., whether by fire or otherwise. The section, which appears to have been suggested by *Re Quicke's Trusts*, (1908) 1 Ch. 887, makes the money capital money if the policy has been kept up under any trust in that behalf, or under any power, statutory or otherwise, or in performance of any covenant or of any obligation, statutory or otherwise, or by a tenant for life impeachable for waste. The section contains full provisions as to the application of the money in the various cases to which it applies. It may be excluded or varied by the trust instrument (if any) (sect. 69), and is only applicable to money received after 1925, but it does not matter when the policy was effected.

Documents relating to the trust or the trust property may be deposited with a bank or any company whose business it is to undertake the safe custody of documents. Any expense is to be paid out of income. (Sect. **21.**)

Share or interest in property not vested in trustees.—Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of sale of such property, or any other thing in action, the trustees are given wide powers, on the property falling into possession or becoming payable, of agreeing or ascertaining the amount or value, accepting authorised securities in satisfaction, allowing deductions for duties, costs, &c., and granting releases without being liable for loss if they act in good faith. (Sect. **22** (1).) They are also relieved from any obligation to put on a *distringas* or apply for a stop order in such a case, or to take proceedings in respect of the acts or defaults of the persons in whom such property is vested, unless required to do so by a beneficiary, and upon due provision for costs. (Sect. 22 (2).) These provisions have effect subject to the trust instrument. (Sect. 69.)

Valuations of the trust property may be made, when required, by duly qualified agents employed by the trustees, and if made in good faith will be binding on all persons interested under the trust. (Sect. 22 (3).)

Audit.—Trustees may, in their absolute discretion, have the trust accounts examined or audited by an independent accountant, but not more than once in every three years except in special cases. They have an absolute discretion as to paying the costs out of income or capital. (Sect. 22 (4).)

Agents.—A wide power of delegation is conferred by sect. **23** under which trustees or personal representatives may, instead of acting personally, employ and pay an agent to transact any business or do any act required to be transacted or done in the execution of the trust or administration of the estate, and will not be liable for the agent's default if employed in good faith. (Sect. 23 (1).)

They can also appoint an agent or attorney to sell, manage, administer, &c. any property outside the United Kingdom. (Sect. 23 (2).)

Without prejudice to this general power to appoint agents, the section repeats the provisions of sect. 17 of T. A. 1893, allowing a trustee to delegate the receipt of money to a solicitor, or of insurance money to a solicitor or banker.

Undivided share in proceeds of sale.—Where a trust estate or the estate of a testator or intestate includes an undivided share in the proceeds of sale of land or in any other property, the trustees or

personal representatives may execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to the other share or shares. (Sect. **24.**)

Delegation of trust during absence abroad.—An entirely new power of appointing an attorney is given by sect. **25** to a trustee, including a tenant for life or statutory owner. (Sect. 25 (11).) It is framed much on the same lines as the temporary Execution of Trusts (War Facilities) Acts, 1914 and 1915. A trustee intending to remain out of the United Kingdom for more than one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from the United Kingdom of all or any trusts, powers and discretions vested in him, either alone or jointly with any other person. (Sect. 25 (1).) But a person being the only other co-trustee and not being a trust corporation cannot be appointed attorney. (Sect. 25 (1).) The fact that the trustee will be liable for the acts or defaults of the attorney in the same manner as if they were his own (sect. 25 (2)) may make him chary of exercising this purely optional power.

The power of attorney will not come into operation until the donor is out of the United Kingdom, and will be revoked by his return. (Sect. 25 (3).) It must be attested and filed at the Central Office within ten days after execution with a statutory declaration by the donor that he intends to remain out of the United Kindom for a period exceeding one month from a specified date (sect. 25 (4)), and the execution of the instrument and statutory declaration must be verified as required in the case of powers of attorney filed at the Central Office. (Sect. 25 (5); see sect. 125 of L. P. A., *ante*.) Further, if the power of attorney confers a power to deal with land or a charge registered under L. R. A., an office copy must be filed at the land registry. (Sect. 25 (6).)

The statutory declaration aforesaid and a statutory declaration by the donee of the power that it has come into operation and has not been revoked by the donor's return will be conclusive evidence in favour of any person dealing with the donee. (Sect. 25 (7).) Moreover, in favour of any person dealing with the donee, any act done or instrument executed by the donee will, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual

as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed. (Sect. 25 (8).)

For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney the power to transfer but not including the power of delegation conferred by this section. (Sect. 25 (9).)

The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust is not to be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust. (Sect. 25 (10).)

INDEMNITIES. (Sects. 26 to 30.)

Protection in respect of rents, covenants, &c.—Sects. 27 and 28 of the Law of Property Amendment Act, 1859, are replaced by sect. **26** and extended to trustees and the scope of them enlarged. The old sections protect an executor or administrator against liability for future breach of covenants in a lease or conveyance at a rent if he has distributed the personal estate after assigning or conveying to a "purchaser," a word which is used in its popular sense of a person who gives value for a thing of value. (*Re Lawley*, (1911) 2 Ch. 530.) As extended, the protection applies also where the lease or property subject to the rent has been assigned or conveyed to a legatee, devisee or other person entitled to call for a conveyance, and whether the property distributed is personalty or realty. Further, the section extends to liability for any indemnity given in respect of any rent, &c. reserved in a lease, or any rent, &c. contained in any grant made in consideration of a rent-charge, and "lease" includes underlease and an agreement for a lease or underlease. And trustees distributing trust property are protected in the same way as personal representatives. The right of the lessor or

grantor to follow the assets is not prejudiced. The section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

Protection by advertisement.—Sect. **27** re-enacts sect. 29 of the Law of Property Act, 1859, with amendments, and extends it to trustees. When the trustees of a settlement or of a disposition on trust for sale or personal representatives wish to convey to or distribute any real or personal property among the persons entitled and they are not certain who all the individuals are who have a claim to the property, they may give notice by advertisement in the *Gazette* and in a daily London newspaper, and also in a daily or weekly paper circulating in the district in the case of land outside the County of London (and other notices in special cases), of their intention to convey or distribute and requiring claimants to send in their claims within a fixed time, not being less than two months. At the end of the time fixed they may convey or distribute to the persons of whose claims they know, without incurring liability to any other person. But this does not prejudice the right of any person to follow the property into the hands of anyone except a purchaser, nor does it free the trustees or personal representatives from liability to make such searches as an intending purchaser should make. The section applies in spite of a contrary direction in the will or trust instrument, if any.

Protection in regard to notice.—A trustee or personal representative acting for the purposes of more than one trust or estate will not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate. (Sect. **28**.)

Maintenance, Advancement and Protective Trusts.
(Sects. 31 to 33.)

Maintenance.—Sects. 42 (4) and (5) and 43 of the Conveyancing Act, 1881, are repealed as regards instruments coming into operation after 1925, and new provisions as to maintenance made by sect. **31.** The rest of sect. 42 of C. A. 1881 will be found embodied in sect. 102 of S. L. A. The new section only applies so far as a contrary in-

tention is not expressed in the instrument, if any, under which the interest arises.

The chief alterations appear to be:—

(1) Sect. 43 of the Act of 1881 does not apply to a contingent interest unless the contingency is the attaining of the age of twenty-one years or the happening of some event *under* that age. The new section applies "where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent." (Sect. 31 (1).)

(2) The new section does not deal only with income during minority. Where a person on attaining twenty-one has not a vested interest in the income, the trustees are to pay the income to him until he either attains a vested interest or dies or until failure of his interest. (*Ibid.*)

(3) The new section expressly provides that it is to apply in the case of a contingent interest only if the limitation or trust carries the intermediate income (see L. P. A. s. 175, *ante*); but that it is to apply to a future or contingent legacy by the parent of or a person standing *in loco parentis* to the legatee, if and for such period as under the general law the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest is to be 5 per cent., if the income available is sufficient and subject to any rules of Court to the contrary. Except for the fixing of the rate of interest, this seems to make no alteration in the law. (Sect. 31 (3).)

(4) The new section somewhat fetters the discretion of the trustees to apply income during minority. They may apply "the whole or such part, if any, as may in all the circumstances be reasonable," and they are told to have regard to certain circumstances, particularly what other income is applicable for the infant's maintenance, education, or benefit. (*Ibid.* (1).)

(5) The new section explains in detail what is to be done with accumulations of income made during minority. Where the infant's interest is vested, he is absolutely entitled to the accumulations on attaining twenty-one or marrying under that age and, in the latter case, can give a valid receipt for it though still an infant. He is also absolutely entitled to the accumulations if at twenty-one or marriage he is entitled to the property in fee simple, absolute or determinable, or absolutely, or for an entailed interest. But in other cases, *e.g.*, if the infant has a contingent life interest, or a vested

life interest but he dies unmarried under twenty-one, the accumulations are an accretion to the capital. (Sect. 31 (2).)

(6) The new section applies expressly to a vested annuity, but in this case accumulations made during infancy are to be held for the annuitant or his personal representatives absolutely. (Sect. 31 (4).)

Advancement, power of.—Hitherto, though a power to use *income* for maintenance, &c. of an infant has been implied in wills and settlements in the absence of a contrary intention under sect. 43 of the Conveyancing Act, 1881, now sect. 31 of T. A., *supra*, a power to use *capital* has had to be expressly conferred. This is altered by sect. **32**, under which the usual power of advancement will be implied in trusts constituted or created after 1925 unless the trust instrument (if any) shows a contrary intention, but only where the property consists of money or securities, or of property held on trust for sale, and not even then if the property is by statute or in equity considered as land, or is applicable as capital money under S. L. A. The power applies where any person is entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age, or on any other event, or subject to a gift over on his death under a specified age, or on any other event, and whether in possession or remainder or reversion, and even if his interest is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs. Not more than half his vested or presumptive share may be advanced, and if he is or becomes absolutely and indefeasibly entitled to a share in the trust money he must account for the money advanced, and if there is a person entitled to a prior interest, whether vested or contingent, his written consent must be obtained, but otherwise the trustees have an absolute discretion. It should be noticed that the power is not confined to infancy.

Protective trusts.—With a view, apparently, to shorten settlements and wills, sect. **33** defines the effect of directing income (including an annuity or other periodical income payment) to be held on "protective trusts" for the benefit of any person for his life or any less period. These trusts are really nothing but an old friend—the protected life interest—under a new name. They are set out in full in the section, which only applies to trusts coming into operation after 1925 and does not validate any trust which if

contained in an instrument would be liable to be set aside, *e.g.*, we suppose, if any person settles his own property on himself on protective trusts, this will not prevent his interest vesting in his trustee in bankruptcy.

PART III.

APPOINTMENT AND DISCHARGE OF TRUSTEES. (Sects. 34 to 40.)

Number of trustees.—Sect. **34** contains provisions for limiting the number of trustees of settlements of land and dispositions on trust for sale of land to four. The limitation only applies to land; it does not apply to trustees for charitable, ecclesiastical or public purposes, nor to trustees for a term of years absolute limited by a settlement on trusts for raising money or a like term created under the statutory remedies relating to annual sums charged on land. (See L. P. A. s. 121.) Where it applies, if there are more than four trustees at the commencement of the Act, they will continue to act, but no new trustees can be appointed till the number falls below four, except where as a result of the appointment the number is reduced to four or less. In a disposition made or coming into operation after the Act not more than four may be appointed, and if more than four are appointed the four first named, who are able and willing to act, will be the trustees, nor may the number be increased beyond four.

Cp. A. E. A. s. 12, *post*, as to probate and administration.

Appointments of trustees of settlements of land and of dispositions on trust for sale of land.—Where new trustees of a settlement of land are appointed, a memorandum of the names and addresses of the persons who are for the time being the trustees thereof for the purposes of S. L. A., must be endorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and such vesting instrument must, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required. (Sect. **35** (2). Cp. sect. 35 of S. L. A., *ante*.)

Similarly, where new trustees of a conveyance on trust for sale (relating to a legal estate) are appointed, a memorandum of the persons who are for the time being the trustees for sale must be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance must,

for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required. (Sect. 35 (3).)

The same section—35 (1)—requires appointments of new trustees of conveyances on trust for sale on the one hand, and of the settlement of the proceeds of sale on the other hand, to be effected by separate instruments subject to any order of the Court, but in such manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale. Two instruments therefore will be necessary where new trustees of a "trader's settlement" are appointed, just as the settlement itself is effected by two instruments.

Power of appointing new or additional trustees.—Sect. 10 of T. A. 1893, which enables new trustees to be appointed out of Court, is replaced by sects. **36, 37** and **38** with the following important amendments:—

(1) Three new occasions on which the power can be exercised are inserted, viz., (a) when a trustee has been removed under a power contained in the trust instrument; (b) when a corporation trustee is or has been dissolved either before or after the commencement of the Act; (c) when a trustee is an infant. This meets the decision in *Re Tallatire* (1885), W. N. 191, which decided that, although an infant is incapable of acting, a new trustee cannot be appointed in his place under sect. 10 of the Act of 1893. This alteration in the law is of importance in view of the new law that the appointment of an infant as trustee is void. (L. P. A. s. 20.)

(2) The person exercising the power may appoint himself. This overrules *Re Sampson,* (1906) 1 Ch. 435.

(3) Where an appointment is being made by the personal representatives of a last surviving or continuing trustee, the concurrence of an executor who has renounced or has not proved is not necessary, and is declared never to have been necessary. But a sole or last surviving executor can, and always could, make the appointment at any time before renouncing probate, without thereby accepting the office of executor. (Sect. 36 (4) and (5).)

(4) The number of trustees must not be increased beyond four.

(5) Additional trustees may be appointed in some cases though no occasion has arisen for appointing new trustees. This is so if

a sole trustee is originally appointed, not being a trust corporation, or if there are not more than three trustees, none being a trust corporation.

The appointment is made in writing by the person having power to appoint new trustees, or, if there is no such person or no such person able and willing to act, then by the trustee or trustees for the time being. The number must not be increased beyond four.

This section imposes no obligation even on a sole trustee to appoint an additional trustee, but sometimes the Act makes provision for an additional trustee being appointed. (See *e.g.*, L. P. A. 1st Sched., Part III., paras. 2 and 4, *ante*, p. 125.)

(6) Where a lunatic or defective, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place can be made by the continuing trustees or trustee, under this section, unless leave has been given by the Judge or Master in Lunacy to make the appointment. (Sect. 36.)

(7) A trustee may be discharged although only one trustee is left (a) if that trustee is a corporation, or (b) if only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money. This, of course, is not possible under S. L. A. Nothing in the Act authorises the appointment of a sole trustee, not being a trust corporation, when the trustee, when appointed, would not be able to give valid receipts for all capital money. (Sect. 37.)

(8) A statement, contained in any instrument by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the United Kingdom for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession [this refers to a lunatic or defective, see sect. 36, *supra*] will, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated. In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, will be valid. (Sect. 38.)

Retirement without appointment.—Sect. 11 of T. A. 1893, reappears in sect. **39,** with no alteration except that a trustee may be discharged although only one trustee will remain, if the remaining trustee is a trust corporation.

Vesting declaration.—Sect. **40** replaces sect. 12 of T. A. 1893, with amendments. To remove doubts, the section declares that a vesting declaration, whether made before or after the commencement of the Act, is, and has always been, effectual, although the estate, interest or right to be vested is not expressly referred to. After 1925, a deed of appointment or of retirement need not contain an express vesting declaration, for such declaration will be implied unless the deed otherwise provides. But neither an express nor an implied declaration will extend to (a) land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock; (b) to land held under a lease, condition or agreement for a lease or underlease, which contains any covenant, &c. against assignment or disposing of the land without licence or consent, unless the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture; (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act of Parliament.

These exceptions are the same as under the old section, except that the exception in (a), and the whole of (b), is new, and that copyholds, being converted into freehold, disappear. The section applies to deeds executed after 1881.

PART IV.

Powers of the Court. (Sects. 41 to 63.)

Appointment of New Trustees. (Sects. 41 to 43.)

Appointment of new trustees.—Sect. **41** replaces sect. 25 of T. A. 1893, which gives a general power to the Court to appoint a new trustee whenever expedient, and appointment out of Court is inexpedient, difficult or impracticable. In addition to felony or bankruptcy of a trustee, the cases where a trustee is a lunatic or defective, or is a corporation which is in liquidation or has been dissolved, are now specified as examples of occasions on which the power may be exercised. In the case of a deed of arrangement within the Deeds of Arrangement Act, 1914, the power may be exercised either by the High Court, or by the Court having bank-

ruptcy jurisdiction in the district in which the debtor resided or carried on business at the date of the execution of the deed.

Authorising remuneration.—The Court, on appointing a corporation, other than the Public Trustee, to be trustee may authorise it to charge such remuneration as the Court thinks fit. (Sect. **42.**)

VESTING ORDERS. (Sects. 44 to 56.)

Vesting orders.—Sects. **44** to **56** take the place of sects. 26 to 41 of T. A. 1893, with the exception of sects. 29 and 34 relating to mortgagees and copyholds respectively, which are rendered unnecessary by the L. P. A., and of sect. 36 (persons who may apply for vesting orders), sect. 37 (powers of trustee appointed by Court), and sect. 38 (power to charge costs on trust estate), which are respectively replaced by sects. 58, 43 and 60. The new sections incorporate also the provisions of sect. 1 of the T. A. 1894, and of sects. 135 to 138 of the Lunacy Act, 1890, and sect. 1 of the Lunacy Act, 1911, and sect. 2 (3) to (5) of the Lunacy Act, 1922.

The following amendments are made:—

(1) The new sections provide certain additional cases in which vesting orders may be made. Vesting orders, both as to land and as to stock and things in action, can be made where a trustee has been appointed out of Court under any statutory or express power, and not merely when the appointment has been made by the Court; and also where a corporation has been dissolved. (Sect. 44 (1).) Further, a general power to make the order is given whenever land or any interest therein, or stock or a thing in action is vested in a trustee, whether by way of mortgage or otherwise, and it appears to the Court to be expedient. (Sect. 44 (7).) And in the case of stock the order can be made if it is standing in the name of a deceased person, whose personal representative is under disability. (Sect. 51 (1) (iv).)

(2) A new provision is substituted by sect. **54** for sect. 2 (3) to (5) of the Lunacy Act, 1922, dealing with the jurisdiction to make vesting orders in the case of lunatics. This has been a fruitful source of difficulty in the past, owing to the uncertainty whether the order should be made by the High Court or in Lunacy. Sects. 44 and 51 give the High Court jurisdiction to make vesting orders where a trustee, entitled to land, stock or a thing in action, whether by way of mortgage or otherwise, either solely or jointly with any

other person, is under disability. And sect. 54 provides as follows:—

"Where the High Court has power under this Part of this Act to make orders in relation to lunatics and defectives who are trustees, the Judge or Master in Lunacy shall, save as provided in this section, have no power to make such an order:

Provided that where—

(a) a lunatic or defective has become a trustee of mortgaged property merely by reason of the mortgage having been paid off;

(b) an order in lunacy is made authorising the exercise of a power to appoint a trustee;

(c) an order in lunacy is made for giving effect to a contract made before the lunatic or defective was under disability;

(d) a lunatic or defective is beneficially entitled to some interest in the property, but holds the property or some interest therein under an express, implied or constructive trust;

the High Court and the Judge or Master in Lunacy shall, in accordance with rules to be made by the Lord Chancellor, have concurrent jurisdiction."

JURISDICTION TO MAKE OTHER ORDERS. (Sects. 57 to 62.)

Authorising dealings with trust property.—A very wide power is given to the Court by sect. **57** to authorise dealings with the trust property which would otherwise be a breach of trust. Hitherto the power of sanctioning a breach of trust has been a very narrow one, being confined to cases of emergency. (See *Re New*, (1901) 2 Ch. 534; *Re Tollemache*, (1903) 1 Ch. 457, 955; *Re Morrison*, (1901) 1 Ch. 701.) The new power can be exercised whenever the Court thinks it expedient, and on the application of any of the trustees or beneficiaries. It does not apply to Settled Land Act trustees.

The other sections of this Part contain nothing new. The most important sections are sect. **61**, replacing sect. 3 of the Judicial Trustees Act, 1896 (power to relieve a trustee from personal liability), sect. **62**, replacing sect. 45 of T. A. 1893 (impounding orders), and sect. **63** replacing sect. 42 of T. A. 1893 (payment into Court).

PART V.

GENERAL PROVISIONS. (Sects. 64 to 71.)

Settled Land Act trustees.—Sect. **64** makes all the powers and provisions contained in the Act with reference to the appointment of new trustees and the discharge and retirement of trustees, apply to S. L. A. trustees and trustees for the purpose of the management of land during a minority. (See sect. 102 of S. L. A.) Where S. L. A. trustees have been appointed by the Court, new or additional trustees may be appointed out of Court by the person nominated by the instrument for the purpose of appointing new trustees, though no S. L. A. trustees were thereby appointed, or, if there is no such person able and willing to act, by the surviving or continuing S. L. A. trustee, or the personal representatives of the last S. L. A. trustee. And such an appointment made before the Act is confirmed.

"Court" in the Act means the High Court, and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, or the County Court, where those Courts respectively have jurisdiction. (Sect. **67.**)

Definitions are contained in sect. **68.** The two following may be noticed:—

"Trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits, includes a personal representative, and "new trustee" includes an additional trustee.

"Trust corporation" means the Public Trustee or a corporation either appointed by the Court in any particular case to be a trustee, or entitled by rules made under sub-sect. (3) of sect. 4 of the Public Trustee Act, 1906, to act as custodian trustee.

Application of Act.—By sect. **69** the Act, except where otherwise expressly provided, applies to trusts including, so far as the Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of the Act. The powers conferred by the Act are in addition to the powers conferred by the trust instrument, if any, but unless otherwise stated,

they apply if and so far only as a contrary intention is not expressed in the trust instrument, if any.

Repeals.—Sect. **70** repeals the enactments set out in the 2nd Schedule, viz., Law of Property Amendment Act, 1859, ss. 23, 27, 28 and 29; C. A. 1881, s. 42 (4) and (5); East India Unclaimed Stock Act, 1885, s. 23 (3); The Lunacy Act, 1890, ss. 135—138, so far as they relate to lunatic trustees, except where the Judge or Master in Lunacy is given concurrent jurisdiction with the High Court; Trustee Act, 1893; Trustee Act, 1893, Amendment Act, 1894, ss. 1 and 4; Judicial Trustees Act, 1896, s. 3; C. A. 1911, s. 8; Lunacy Act, 1911, s. 1; Deeds of Arrangement Act, 1914, s. 18; Housing (Additional Powers) Act, 1919, s. 9; Railways Act, 1921, as regards the words "the Trustee Act, 1893, and " in sect. 15; Lunacy Act, 1922, s. 2 (3) to (5); and the relevant provisions of L. P. A. 1922 and 1924.

Short title, &c.—Sect. **71** gives the short title—Trustee Act, 1925—brings the Act into operation on the 1st January, 1926, extends it only to England and Wales, and makes it bind the Crown.

FIRST SCHEDULE.

RETROSPECTIVE AMENDMENTS OF THE TRUSTEE ACT, 1893, AND THE ENACTMENTS REPLACED BY THAT ACT.

[These are of very slight importance.]

SECOND SCHEDULE.

ENACTMENTS REPEALED.

[See *ante*, under sect. 70, and Table of Repealed Statutes, *ante*, p. xiii.]

ADMINISTRATION OF ESTATES ACT, 1925.

The enactments relating to the administration of the estates of deceased persons are consolidated by the Administration of Estates Act, 1925—a statute containing fifty-nine sections and two schedules. The Act is arranged as follows:—

Part I.—Devolution of Real Estate. (Sects. 1 to 3.)

Part II.—Probate and Letters of Administration. (Sects. 4 to 31.)

Grant of Representation. (Sects. 4 to 21.)

Special Provisions as to Settled Land. (Sects. 22 to 24.)

Duties, Rights and Obligations of Personal Representatives. (Sects. 25—31.)

Part III.—Administration of Assets. (Sects. 32 to 44.)

Part IV.—Distribution of Residuary Estate. (Sects. 45 to 52.)

Part V.—Supplemental. (Sects. 53 to 59.)

First Schedule.

Part I.—Rules as to payment of Debts where the Estate is insolvent.

Part II.—Order of application of Assets where the Estate is solvent.

Second Schedule.

Enactments repealed.

Repeals.—The Acts repealed and for the most part replaced by this statute are:—13 Edw. 1, c. 19; 13 Edw. 1, c. 23; 13 Edw. 1, c. 34 (from "and if a wife willingly leave her husband" to "in which case

she shall be restored to her action"); 25 Edw. 1, c. 7; 25 Edw. 1, c. 18 (from "and the residue" to "reasonable parts"); statute (*temp. incert.*) concerning tenants by the curtesy of England; statute Prerogativa Regis (*temp. incert.*), c. 18 (from "Nevertheless it is used" to the end of the chapter); 4 Edw. 3, c. 7; 25 Edw. 3, st. 5, c. 5; 31 Edw. 3, st. 1, c. 11; 21 Hen. 8, c. 4; 21 Hen. 8, c. 5; 32 Hen. 8, c. 37, ss. 1, 2 and 3; 1 Edw. 6, c. 12, s. 16; 5 & 6 Edw. 6, c. 11, s. 11; 5 & 6 Edw. 6, c. 12, s. 2; 43 Eliz. c. 8; 12 Chas. 2, c. 24, s. 7 (from "tenures in franke almoigne" to "nor to take away"); Statute of Distribution (22 & 23 Chas. 2, c. 10); Statute of Frauds (29 Chas. 2, c. 3), ss. 10, 11, 23, 24; 30 Chas. 2, c. 7; 1 Jas. 2, c. 17; 4 Will. & Mar. c. 24, s. 12; Administration of Estates Acts, 1798; Executors Act, 1830; Debts Recovery Acts, 1830; Real Property Limitation Act, 1833, s. 41; Civil Procedure Act, 1833, ss. 2, 37 and 38; Fines and Recoveries Act, 1833, s. 27 (the words "no woman in respect of her dower and"); Administration of Estates Act, 1833; Dower Act, 1833; Debts Recovery Acts, 1839 and 1848; Real Estate Charges Acts, 1854, 1867 and 1877; Court of Probate Act, 1857, ss. 70 to 83; Court of Probate Act, 1858, ss. 16, 18, 19, 21 and 22; Law of Property Amendment Act, 1859, ss. 14 to 18; Administration of Estates Act, 1869; Supreme Court of Judicature Act, 1875, s. 10; Intestates' Estates Acts, 1884 and 1890; Bankruptcy Act, 1914, s. 130; Administration of Justice Act, 1920, s. 17; the relevant provisions of L. P. A. 1922, and L. P. A. 1924.

Except as regards the three last mentioned statutes, the Acts are only repealed so far as they apply to deaths occurring after 1925. (Sect. 56.)

It will be noticed that no mention has been made of Part I. of the Land Transfer Act, 1897 (which provided for the vesting of the real estate of a deceased person in his personal representatives), or of sect. 30 of C. A. 1881 (which vested trust and mortgage estates in the personal representatives), or of sect. 12 of Conveyancing Act, 1911 (which enabled the proving executors to make a title to realty without the concurrence of the non-proving executors). The reason is that those enactments were repealed by L. P. A. 1922, and re-enacted in an amended form in that Act, and the repeals of the C. A. sections are repeated, to make assurance doubly sure, by the L. P. A. The new provisions as amended by L. P. A. 1924, are incorporated in the Act under consideration.

PART I.

DEVOLUTION OF REAL ESTATE. (Sects. 1 to 3.)

What property vests in personal representative.—The general scheme of Part I. of Land Transfer Act, 1897, is preserved. Real estate to which a deceased person was entitled for an interest not ceasing on his death is to devolve on his personal representative just like a chattel real, and the personal representative, *i.e.*, the executor, original or by representation, or administrator for the time being (sect. 55), is to be deemed the heirs and assigns of the deceased within the meaning of all trusts and powers, and is to be his representative in regard to such real estate as well as in regard to his personal estate. (Sect. **1.**)

The new enactment is, however, more explicit than the old as to what is meant by "real estate." The expression "real estate" is defined to include (i) chattels real, and land in possession, remainder or reversion, and every interest in or over land to which the deceased was entitled at his death, and (ii) real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land. (Sect. **3** (1).)

Moreover, real estate passing under any gift contained in the deceased's will which operates as an appointment under a general power to appoint by will is to vest in the personal representative, as is also an entailed interest disposed of by the deceased's will (sect. 3 (2)); but an entailed interest not disposed of by the will does not so vest, though any further or other interest of the deceased in the same property in remainder or reversion which is capable of being disposed of by his will does so vest (sect. 3 (3)), nor does property held in joint tenancy (sect. 3 (4)), nor the interest of a corporator sole in the corporation's real and personal estate, which will devolve on his successor, and this applies on the demise of the Crown as respects all property vested in the Crown as a corporation sole. (Sect. 3 (5).)

Application to real estate of law affecting chattels real.—As under Part I. of the Land Transfer Act, 1897, sect. **2** contains a general provision that, "subject to the provisions of this Act, all enactments and rules of law, and all jurisdiction of any Court with respect to the appointment of administrators or to probate or letters

of administration, or to dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate in force before the commencement of this Act, and all powers, duties, rights, equities, obligations, and liabilities of a personal representative in force at the commencement of this Act with respect to chattels real, shall apply and attach to the personal representative and shall have effect with respect to real estate vested in him, and in particular all such powers of disposition and dealing as were before the commencement of this Act exercisable as respects chattels real by the survivor or survivors of two or more personal representatives, as well as by a single personal representative, or by all the personal representatives together, shall be exercisable by the personal representatives or representative of the deceased with respect to his real estate.

"Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part of this Act shall not, *save as otherwise provided as respects trust estates including settled land*, be made without the concurrence therein of all such representatives or an order of the Court, but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of the Court, and shall be as effectual as if all the persons named as executors had concurred therein."

We have set this provision out *verbatim* because it is not at all clear whether it alters the law with regard to the question whether the authority of the personal representatives is joint or several. Apart from the Act, executors, and apparently also administrators, have a several authority over personalty, including leaseholds, as they also have under sect. 30 of C. A. 1881 over trust and mortgage estates, but over realty to which the deceased was entitled beneficially their authority is joint only. It is clear that the Act has not affected the rule as to pure personalty; one executor or one administrator will still be able to deal with pure personalty; nor has it affected the rule as to beneficial realty, using that term so as not to include leaseholds; all the proving general executors, all the general administrators, must still join in any conveyance of realty unless the Court otherwise orders; non-proving executors, however, may be disregarded. (Sect. 3 (2); and see sect. 8.) But what about

trust and mortgage realty? The words which we have italicised appear to refer merely to the provisions of sect. 13, which allows representation to be granted in respect of a trust estate only, and sect. 24, under which special personal representatives appointed to act for the purposes of settled land may dispose of the settled land without the concurrence of the general personal representatives, who may likewise dispose of the other property and assets of the deceased without the concurrence of the special personal representatives. It would seem, therefore, that all the proving executors, all the administrators (general or special as the case may be), must join in any conveyance of trust or mortgage realty, if the deceased died after 1925. If he died before 1926, the Act does not apply. (Sect. 54.)

And what about leaseholds? "Real estate" in this Part of the Act includes chattels real. (Sect. 3 (1).) It seems, therefore, that, if the deceased died after 1925, all the proving executors, all the administrators (general or special as the case may be), must join in any conveyance of leaseholds unless the Court otherwise orders. At any rate, practitioners can only act on that assumption.

Sect. 2 (3) contains a saving clause to the effect that, without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real estate shall not, save as hereinafter provided (see sect. 34), affect (a) any rule as to marshalling or as to administration of assets; (b) any beneficial interest in real estate under any testamentary disposition; (c) any mode of dealing with any beneficial interest in real estate; (d) the right of any person claiming to be interested in the real estate to take proceedings for its protection or recovery against any person other than the personal representative.

PART II.

PROBATE AND LETTERS OF ADMINISTRATION. (Sects. 4 to 31.)

There is much in Part II. of the Act which is familiar law. For instance, sect. **5** reproduces the provisions of the Court of Probate Acts, 1857 and 1858, with regard to the cesser of the right of an executor to prove a will. His rights wholly cease if he (i) survives the testator but dies without proving, or (ii) is cited and does not appear, or (iii) renounces. Again, sect. **16** repeats the provisions of those Acts with regard to the granting of administration *pendente*

lite, and sect. **18** their provisions as to the grant of administration *durante absentia*, if at the expiration of twelve months from the death of a person any personal representative of the deceased to whom representation has been granted is residing out of the jurisdiction. And sect. **26** is a useful amalgamation of various statutory provisions, going back as far as 1285, and ending with the Civil Procedure Act, 1833, relating to rights of action by and against personal representatives. These sections, as they appear to make no alteration in the law, need not be further dealt with, but it is necessary to call attention to the following points, which are new:—

(1) Renouncing executor proving.—If an executor who has renounced is subsequently granted probate, previous acts of the proving executor or administrator are not prejudiced. A memorandum of the subsequent probate is to be indorsed on the original grant. This applies whether the testator died before or after the Act. (Sect. **6**.)

(2) Executor of executor represents original testator.—This, of course, is so at the present time, but the old law of 25 Edw. 3. st. 5, c. 5, and sect. 16 of the Court of Probate Act, 1858, is put in a clearer form by sect. **7**, which runs as follows:—

"(1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

"This provision shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

"(2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

"(3) The chain of representation is broken by—

"(a) an intestacy; or

"(b) the failure of a testator to appoint an executor; or

"(c) the failure to obtain probate of a will;

but is not broken by a temporary grant of administration if probate is subsequently granted.

"(4) Every person in the chain of representation to a testator—

"(a) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living;

"(b) is, to the extent to which the estate, whether real or personal, of that testator has come to his hands, answerable as if he were an original executor."

(3) Proving executors can exercise all powers.—All the powers which are by law conferred on personal representatives may be exercised by the executor or executors who have proved, although there are others to whom power to prove has been reserved. This applies whenever the death occurred. (Sect. **8.** Cp. sect. 2, *ante*.)

(4) Intestate's estate vests on death in President.—Where a person dies intestate after 1925 his real and personal estate will vest, until administration is granted, in the President of the P. D. & A. Division. (Sects. **9** and 55 (xv).) This is so now as to personalty, but realty at present vests in the heir.

(5) Court's discretion as to grant.—Fuller provisions are inserted as to the persons to whom administration may be granted. The Court is to have regard to the rights of all persons interested in the real and personal estate, and in particular administration with the will annexed may be granted to a devisee or legatee; and, in regard to land settled previously to the death of the deceased and not by his will, administration may be granted to the trustees of the settlement; and any such administration may be limited in any way the Court thinks fit. But, where the deceased died wholly intestate, (a) administration must be granted to some one or more of the persons interested under the Act in his residuary estate (see sect. 46, *post*), unless the Court decides otherwise owing to the insolvency of the estate or other special circumstances; and (b) in regard to settled land, administration must be granted to the trustees, if any, of the settlement if willing to act. (Sect. **10.**)

Further, by sect. **13**, representation may be granted in respect of real estate or any part thereof, and either separately or together with personal estate, and also in respect of real estate only where there is no personal estate or in respect of a trust estate only, and a grant of administration to real estate may be limited in any way the Court thinks proper. But, where the estate is known to be insolvent, the grant of representation must not be served except as regards a trust estate.

(6) Administration bonds.—Probate rules may be made for dispensing with sureties to administration bonds when the grant is made to a trust corporation (for definition see under sect. 14, below) or to two or more individuals or in any other proper case. (Sect. **11.**)

(7) Number of personal representatives.—Representation is not to be granted to more than four persons in regard to the same property. If any beneficiary is an infant, or a life interest arises under the will or intestacy, administration must be granted either to a trust corporation, with or without an individual, or to not less than two individuals; and in these two cases, if there is only one personal representative, not being a trust corporation, the Court on application may appoint an additional representative. This section applies to grants made after 1925, whenever the deceased died. (Sect. **12.**)

(8) Trust corporation may have probate or administration.—Sect. **14** replaces sect. 17 of the Administration of Justice Act, 1920, whenever the deceased died. Probate or administration may be granted to a trust corporation either solely or jointly with another person. It is *not* to be granted to a syndic or nominee. Any authorised officer, or the directors or governing body, may swear affidavits, give security, and do other necessary acts to enable the grant to be made to the corporation. Where at the commencement of the Act any property is vested in a syndic on behalf of a trust corporation acting as personal representative, it is to vest in the corporation, but this vesting does not apply to securities, *i.e.*, stocks, bonds or shares (sect. 55 (xxiii)) registered or inscribed in the syndic's name, or to land or a charge registered in his name under L. R. A.; such property must be transferred by him to the corporation or as it may direct. No such vesting or transfer is to operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

"Trust corporation" means the Public Trustee or a corporation either appointed by the Court in any particular case to be a trustee or entitled by rules made under sect. 4 (3) of the Public Trustee Act, 1906, to act as custodian trustee. (Sect. 55 (xxvi).) This is narrower than sect. 17 of the Administration of Justice Act, 1920,

which applies to all corporations having their principal place of business in the United Kingdom.

(9) Infant executor.—An infant cannot obtain probate, and the appointment of an infant as executor will not operate to transfer to him any interest in the deceased's property, or constitute him personal representative for any purpose until probate is granted to him after majority. Where an infant is appointed or becomes sole executor, administration with the will annexed must be granted to his guardian or such other person as the Court thinks fit. (Sect. **20.**)

(10) Settled land executors.—One of the novelties introduced by the new legislation is that the legal fee simple, or the term of years absolute, in settled land is vested in the tenant for life, although his beneficial interest only lasts for his life. Provision, therefore, has to be made for the destination of the legal estate on his death. It is accordingly made to devolve on his personal representatives on trust to vest it in the next person entitled. Sects. **22** to **24** of A. E. A. contain special provisions to meet this case. A testator may appoint, as special executors in regard to settled land, the trustees of the settlement, and may appoint other persons, with or without such trustees, to be his general executors. A testator dying after 1925 is deemed to have appointed the trustees of the settlement as executors in regard to the settled land, in default of an express appointment to the like effect. Probate may be granted to such trustees specially limited to the settled land. (Sect. 22.) Where, owing to representation not being granted to the trustees of the settlement, the settled land becomes vested in a personal representative who is not a trustee of the settlement, he may renounce his office in regard to the settled land without also renouncing the same in regard to other property, or may ask to have the grant revoked in regard to the settled land only. Whether he does so or not, the High Court may appoint a special or additional personal representative for the settled land on the application of the trustees of the settlement or any person beneficially interested thereunder. The Court must usually appoint as special or additional representatives such persons as may be necessary to secure that the representatives to act in respect of the settled land shall be the same persons as are the trustees of the settlement. Probate rules may be made for giving

effect to this section. (Sect. 23.) If tenant for life dies intestate, administration may be granted to the trustees of the settlement. (Sect. 10.) The special and general representatives will have independent powers over their respective properties. (Sect. 24.)

(11) Executor de son tort.—Sect. **28** gives a new reading of 43 Eliz. c. 8, providing—

If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death, and (b) any payment made by him which might properly be made by a personal representative.

This seems to give an executor *de son tort* a right of retainer.

(12) Crown, grant of administration to nominee of.—Sect. **30** reproduces sects. 2 and 3 of the Intestates Estates Act, 1884, with amendments. Where administration is granted to the Treasury Solicitor, or other nominee of the Crown, proceedings by or against him to recover any real or personal estate are to be of the same character, and to be instituted and carried on in the same manner, and to be subject to the same rules of law and equity (including the rules of limitation of actions, except as otherwise provided by the Act (see sect. 57, *infra*)) as if he were an ordinary administrator. An information or other proceeding on the part of His Majesty is not to be filed or instituted, and a petition of right is not to be presented in respect of any real or personal estate of a deceased person, except within the same time and subject to the same rules within and subject to which a proceeding for the like purposes might be instituted by or against a subject.

The Treasury Solicitor, when applying for administration, is not to be required or allowed to deliver any affidavit, statutory declaration, account, certificate, or other statement verified on oath, but must deliver instead a signed account or particulars of the estate.

References in sects. 2, 4, 6 and 7 of the Treasury Solicitor Act,

1876, and in sect. 3 (3) of the Duchy of Lancaster Act, 1920, to "personal estate" are to include real estate. This reverses the law of *Re Hartley*, (1899) P. 40, under which realty was held not to vest in the Treasury Solicitor.

(13) Probate rules may be made to give effect to this Part of the Act as regards real estate, and in particular for adapting the procedure and practice on the grant of administration to the case of real estate. (Sect. **31.**)

PART III.

ADMINISTRATION OF ASSETS. (Sects. 32 to 44.)

Some very useful alterations in the law are made by this Part of the Act. Except where otherwise expressly stated, the provisions of the Act only apply to deaths occurring after 1925. (Sect. 54.) The following are the chief points to be noted:—

(1) Assets for payment of debts.—Sect. **32** reproduces various statutory provisions by declaring that the real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which he disposes by will under a general power, including the statutory power to dispose of entailed interests (see L. P. A. s. 176), are assets for payment of his debts and liabilities. This is not, however, to prejudice incumbrancers. The only new point here is that an entailed interest, if disposed of by will, is liable for debts. If not so disposed of, it will still not be liable. (L. P. A. s. 176 (2), *ante*.)

(2) Intestacy, total or partial—Trust for sale.—Sect. **33** is an important innovation. Where a person dies after 1925 intestate as to any real or personal estate, the personal representatives are to hold real estate on trust to sell, and personal estate on trust to convert into money, with power to postpone conversion. But no reversionary interest is to be sold till it falls into possession, except for special reasons, nor are personal chattels to be sold without special reason unless required for purposes of administration for want of other assets. (Sect. 33 (1).)

The expression "personal chattels" means carriages, horses, stable furniture and effects (not used for business purposes), motor cars

and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores, but does not include chattels used at the death of the intestate for business purposes, nor money or securities for money. (Sect. 55 (x).)

Out of the net money to arise from the sale and conversion of the estate (after payment of costs), and out of the ready money (so far as not disposed of by will), the personal representative must pay funeral, testamentary and administration expenses, debts and other liabilities, and out of the residue he must set aside a fund sufficient to provide for any pecuniary legacies. (Sect. 33 (2).)

During the minority of any beneficiary or the subsistence of any life interest and pending distribution, the personal representatives may invest the residue in any investments for the time being authorised by statute for the investment of trust money, with power to change such investments. (Sect. 33 (3).)

The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is, in this Act, referred to as "the residuary estate of the intestate." (Sect. 33 (4).)

The income, including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income, of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid, may, however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between tenant for life and remainderman. (Sect. 33 (5).)

Nothing in this section is to affect the rights of any creditor of the deceased or the rights of the Crown in respect of death duties. (Sect. 33 (6).)

Where the deceased leaves a will, this section will have effect subject to the provisions therein contained. (Sect. 33 (7).)

(3) Insolvent estate.—A much needed simplification of the law is effected by sect. **34** (1) and Part I. of the 1st Schedule. Hitherto

the order of payment of debts has varied according as the estate has been administered in or out of Court. In the case of a person dying insolvent after 1925, the rules as to payment of debts will be the same whether the estate is administered in or out of Court. The funeral, testamentary, and administration expenses have priority. Subject thereto, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities, as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

This reproduces sect. 10 of the Judicature Act, 1875, with an addition incorporating the decision in *Re Whitaker*, (1901) 1 Ch. 9, and extends it to administration out of Court as well as to administration in the Chancery Division.

Administration in bankruptcy appears to be abolished, sect. 130 of the Bankruptcy Act, 1914, being repealed, and not replaced by the Act.

As to exactly what bankruptcy rules are introduced by this provision into the administration of a deceased person's estate, see the decisions on sect. 10 of the Judicature Act, 1875, in Snell's Equity, pp. 221 *et seq.*

(4) Retainer and preference.—The right of retainer of a personal representative and his right to prefer creditors may, in case of a death after 1925, be exercised in respect of all assets. *Re Williams*, (1904) 1 Ch. 52, to the effect that retainer is not allowed out of realty, is thus overruled. But the right of retainer is only to apply to debts owing to the personal representative in his own right, whether solely or jointly with another person. This reverses, in the case of deaths after 1925, the law of *Sander* v. *Heathfield*, L. R. 19 Eq. 21, and *Re Hubback*, 29 Ch. D. 934, that debts owing to an executor as trustee for others can be retained. And it apparently reverses *Frankes* v. *Cooper*, 4 Ves. 763, and *Loomes* v. *Stotherd*, 1 S. & S. 458, as explained in *Re Hayward*, (1901) 1 Ch. 221, that he can retain a debt owed to a trustee for him.

Subject to this, nothing in the Act is to affect a personal representative's right of retainer or of preference. (Sect. 34 (2).) Apparently an executor *de son tort* is given a right of retainer by the Act. (See sect. 28, *ante*.)

(5) Order of application of assets where the estate is solvent. —By sect. 34 (3) and Part II. of the 1st Schedule, where the estate of a person dying after 1925 is solvent, his real and personal estate will, subject to rules of Court and the statutory provisions as to charges on property of the deceased (see sect. 35, *infra*), and to the provisions (if any) contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the following order:—

(1) Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.

(2) Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

(3) Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

(4) Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

(5) The fund (if any) retained to meet pecuniary legacies.

(6) Property specifically devised or bequeathed rateably according to value.

(7) Property appointed by will under a general power, including the statutory power to dispose of entailed interests, rateably according to value.

(8) The following provisions shall also apply—

(a) The order of application may be varied by the will of the deceased.

(b) This part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.

For the most part the Schedule adopts the rules laid down by the Courts as to the order of administration (see Snell's Equity, p. 233), but there are some alterations, notably in putting realty and personalty on the same footing, and in making property not disposed

of at all liable in priority to property disposed of by a residuary gift.

(6) Mortgage debts.—Locke King's Acts, or, as they are more properly called, the Real Estate Charges Acts, 1854, 1867 and 1877, perish in the general slaughter of Acts, and re-appear in a better form in sect. **35.** No substantial alteration is made by the section, which is as follows:—

"(1) Where a person dies possessed of, or entitled to, or under a general power of appointment (including the statutory power to dispose of entailed interests) by his will disposes of, an interest in property which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

"(2) Such contrary or other intention shall not be deemed to be signified—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts upon any such estate,

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

"(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise."

(7) Assent by personal representative.—Fuller provisions are made as to assets by sect. **36,** which applies to assents and conveyances made after 1925, whenever the deceased died. A personal representative may assent to the vesting in any person who may be in any way entitled thereto, either beneficially, or as trustee or personal representative, of any real estate to which the testator or intestate was entitled, or over which he exercised a general power of appointment by his will, including the statutory power to dispose of entailed

interests, and which devolved on the personal representative. Instead of assenting, the personal representative may convey the property to the person entitled. This is implied, though not expressed, in the section. The assent will vest the property, and, unless a contrary intention appears, will relate back to the death. The statutory covenant against incumbrances may be implied by the personal representative assenting "as personal representative." To pass a legal estate, the assent must be in writing, signed by the personal representative, and must name the person in whose favour it is given. That person may require notice of the assent or conveyance to be written on or permanently annexed to the probate or letters of administration at the cost of the estate, and at the like cost to have the probate, &c. produced to prove that this has been done. The assent or conveyance will not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate, or to be indemnified against duties, debts, or liabilities, and as a condition of giving an assent or making a conveyance the personal representative may require security for such duties, &c., but is not to postpone giving an assent merely because of the subsistence of any such duties, &c. if reasonable arrangements have been made for discharging them. (Cp. note to Form No. 5 in 1st Sched. of S. L. A., *ante*.) The section is not to impose any stamp duty on an assent.

Before assenting or conveying, the personal representative may give possession to the person entitled, without prejudice to his right to resume possession or to convey as if he were in possession, subject, however, to the rights of any lessee, tenant, or occupier in possession or in actual occupation of the land. (Sect. **43** (1).)

Any person interested claiming possession, appointment of a receiver, conveyance or assent, may apply to the Court. (Sect. 43 (2).)

Sect. 43 applies whenever the deceased died.

(8) Protection of purchaser in connection with assent, &c.— Sect. 36 contains some useful provisions to protect a purchaser for money or money's worth. The case of *Wise* v. *Whitburn*, (1924) 1 Ch. 460, has recently shown the difficulties arising from the possibility of the personal representative having assented to a devise before selling. (See 43 "Law Notes," p. 197.) A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate, is, in favour of

a purchaser (but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative), sufficient evidence that an assent or conveyance has not been given or made, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration. And a conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement will (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer the legal estate to him.

A personal representative making a false statement in regard to any such matter will be liable in like manner as if the statement had been contained in a statutory declaration. (Sect. 36 (6).)

Further, an assent or conveyance by a personal representative in respect of a legal estate is, in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or administration, to be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts (if any), but is not otherwise prejudicially to affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon. (Sect. 36 (7).)

A conveyance of a legal estate by a personal representative to a purchaser will not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for. (Sect. 36 (8).)

(9) Revocation of probate or administration.—The decision in *Hewson* v. *Shelley*, (1914) 2 Ch. 13, is made statutory by sect. **37** and is made to apply to revocation of probate as well as of letters of administration. All conveyances of any interest in real or personal estate made to a purchaser by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation of the grant. This applies retrospectively, but without prejudice to any order of the Court made before 1926.

(10) Following property into beneficiaries' hands.—Sect. **38** replaces in an amended form the enactments relating to the right to follow property and for enabling effect to be given to the rights of creditors and other persons interested. An assent or conveyance by a personal representative to a person other than a purchaser is not to prejudice the rights of any person to follow the property into the hands of any person other than a purchaser.

Notwithstanding any such assent or conveyance the Court may, on the application of any creditor or other person interested, (a) order a sale or other transaction to be carried out which the Court considers requisite for the purpose of giving effect to the rights of the persons interested; (b) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes; (c) give directions respecting the preparation and execution of any conveyances, &c.; or (c) make a vesting order, &c. But this is not to prejudice a purchaser or a person deriving title under him. These provisions apply whenever the testator or intestate died.

(11) Powers of management, sale, &c.—Sect. **39** provides that for purposes of administration or during a minority or life interest or until distribution, the personal representatives have (i) the same powers over the real and personal estate, including power to mortgage or charge, as they had over personalty before the Act; (ii) all the powers, discretions and duties conferred or imposed by law on trustees for sale, including the power to overreach equities; (iii) all the powers conferred by statute on trustees for sale. (See L. P. A. s. 28, *ante*.) This section is not to affect the right of any person to require an assent or conveyance. It applies whenever the deceased died.

(12) Power to create term of years or a rent-charge.—Sect. **40** gives the personal representative power, whenever the deceased died, to demise land for a term of years absolute to trustees on usual trusts for raising or securing any principal sum and interest for which the land is liable, and to grant a rent-charge for giving effect to any annual sum for which the land or income thereof is liable.

(13) Appropriation to satisfy legacy or share.—Sect. 4 of the Land Transfer Act, 1897, contains provisions as to appropriation, but they have been practically inoperative. Sect. **41** of A. E. A. deals with the subject more fully and more satisfactorily. The personal representative may appropriate any part of the real or personal estate in its actual condition in or towards satisfaction of

any legacy or any other interest or share in the deceased's property whether settled or not. But an appropriation is not to be made under the section so as to affect prejudicially any specific devise or bequest; and certain consents are required, *e.g.*, of the person (if any) of full age and capacity absolutely and beneficially entitled, or, in the case of a settled share, of the trustee or the person for the time being entitled to the income, or his guardian, committee, &c. But in some cases consent is dispensed with. An appropriation will bind all persons interested whose consent is not made requisite. In favour of a purchaser the appropriation is deemed to be properly made if made in purported exercise of the powers given by the section. The section does not prejudice any other power of appropriation conferred by law or by the will (if any). It applies whether the deceased died intestate or not and whether before or after the Act, and extends to property over which a testator exercises a general power of appointment, including the statutory power to dispose of entailed interests, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

(14) Infant's legacy or share of residue.—Difficulties often arise in practice with regard to legacies given to an infant where the will contains no direction as to payment to the infant's parent or guardian. According to the decision of Eve, J., in *Re Salomons*, (1920) 1 Ch. 290, an executor cannot free himself from personal liability by appropriating the amount of the legacy and investing it in some trust security The only safe course at present is to pay the money into Court. The effect of this decision is annulled by sect. **42.** A personal representative who, before the Act, has retained or sold a devise, legacy, residue or share of residue to which an infant is absolutely entitled, and invested it or the proceeds in a trust investment is freed from liability. And, after the Act, the personal representative may discharge himself by appointing a trust corporation or two or more individuals not exceeding four (including himself or not) to be trustees of any devise, legacy, residue or share of residue to which the infant is absolutely entitled under a will or intestacy, unless the devise, legacy, &c. is given to trustees by the will (if any), and may vest the devise, legacy, &c. in them. They may also be appointed to be trustees of any land forming part of the share or residue for the purposes of S. L. A. and the statutory

provisions relating to the management of land during a minority. (See S. L. A. s. 102, *ante*.)

(15) Postponement of distribution.—Subject to the foregoing provisions, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from the death. (Sect. **44**, replacing sect. 5 of the Statute of Distribution.)

PART IV.

DISTRIBUTION OF RESIDUARY ESTATE. (Sects. 45 to 52.)

Part IV. of the Act drastically alters the law of the devolution of the beneficial interest in property on the death of the owner intestate after 1925. The existing rules as to the descent of realty are swept away (except as stated below), and the same law is made to apply to real and personal estate without distinction. But this law is not the existing law relating to the devolution of personal estate. The Statutes of Distribution, equally with the Inheritance Act, are thrown on the legislative scrap-heap. Husband and wife are placed upon a footing of equality. And so are father and mother, and grandfather and grandmother respectively. Mother gets back the old priority over brothers and sisters which she lost in 1685. Whole blood takes priority over half-blood—an alteration which would have mightily pleased the late Joshua Williams. Kindred more remote than first cousins and their issue are excluded from participation. Representation of deceased persons by their issue is allowed through all degrees. To save the cost of taking out letters of administration to the estates of infants, the beneficiaries only take absolutely vested interests at twenty-one or marriage.

These alterations will effect an enormous simplification when sufficient time has elapsed to allow practitioners to forget the old law. For many years, however, after 1925 the old law will have to be remembered for the purpose of investigation of title, and in three cases at least the old law of descent will still apply to deaths occurring after 1925, viz., (1) where there is a limitation to the heir as purchaser (A. E. A. s. 51 (1); L. P. A. s. 132), and (2) where a tenant in tail dies without disposing of the land by his will and leaving issue (A. E. A. s. 51 (4); L. P. A. s. 130 (4)), and (3) sometimes on the death of a lunatic. (A. E. A. s. 51 (2), *post*.) Investigation of title will also be greatly simplified by the provision of a trust for sale in all cases of intestacy. (See *ante*, sect. 33.) A

purchaser will not be concerned with the question who is entitled beneficially to the land. The trouble and expense of proving heirship or kinship will disappear so far as conveyancing is concerned.

We may now turn to the details of this Part of the Act, which is all new law, and applicable only to deaths after 1925, first, however, mentioning that the expression "real and personal estate" in this Part means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate which (otherwise than in right of a power of appointment, or of the testamentary power conferred by sect. 176 of L. P. A. to dispose of entailed interests (*ante*) he could, if of full age and capacity, have disposed of by his will. (Sect. **52.**)

(1) Abolition of descent to heir, curtesy, &c.—With the object of assimilating the rules as to real and as to personal property, sect. **45** sweeps away (a) all existing modes, rules, and canons of descent, and of devolution by special occupancy or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or by the custom of gavelkind or borough English, or by any other custom of any county, locality, or manor, or otherwise howsoever; (b) tenancy by the curtesy (see, however, sect. 130 (4) of L. P. A. *ante*) and every other estate of a husband in his wife's real estate; (c) dower and freebench, and every other estate of a wife in her husband's realty, with one insignificant exception in the case of freebench; (d) escheat. But nothing in the section affects the descent or devolution of an entailed interest. (See sect. 130 of L. P. A. *ante*.)

(2) Distribution of residue.—The residuary estate of the intestate, *i.e.*, what is left after payment of debts, &c. (sect. 33 (4), *ante*), is to be distributed to or held on trust for the following persons (sect. **46**):—

Relations of intestate.	How estate distributed.
Husband or wife, but no relations, or no relations within this Table.	Husband or wife takes everything absolutely.
Husband or wife, and no issue, but some other relation within this Table.	Husband or wife takes (1) personal chattels (see p. 324, *ante*) absolutely; (2) £1,000 net, free of death duties and costs, with 5 per cent. interest thereon from death till payment or appropriation; and (3) a life interest in the rest. The other relation takes in remainder.

Relations of intestate.	How estate distributed.
Husband or wife and issue	Husband or wife takes personal chattels absolutely, and £1,000 as above, and a life interest in half the rest. Subject thereto, the property is held on the statutory trusts for the issue (see below). If those fail in lifetime of husband or wife, he or she takes a life interest in the other half also, or the whole estate absolutely if there are no relations, or none within this Table.
Issue, but no husband or wife	The whole residue is held on the statutory trusts for the issue (see below).
Both parents, but no issue	Father and mother take in equal shares absolutely, subject to rights of husband or wife (as above).
One parent only, but no issue	Father or mother takes absolutely, subject to rights of husband or wife (as above).
None of the above relations, but other relations. * The property is held on the "statutory trusts" (see below).	Subject to the rights of a surviving husband or wife, the relations are entitled in the following order:— (1) Brothers and sisters of the whole blood and their issue.* (2) Brothers and sisters of the half blood and their issue.* (3) Grandparents in equal shares. (4) Uncles and aunts, being whole brothers or sisters of a parent of the intestate, and their issue.* (5) Uncles and aunts, being half brothers or sisters of a parent of the intestate, and their issue.*
No husband or wife, and no relations, or only relations more distant than those above mentioned.	The Crown or the Duchy of Lancaster or Duke of Cornwall takes as *bona vacantia*; but may out of the whole or part of the property provide, in accordance with existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom he might reasonably have been expected to make provision.

(3) The statutory trusts for issue, &c.—These are contained in sect. **47.** The property is to be held in trust in equal shares for the children living at the intestate's death who attain twenty-one or marry under that age, and for all the issue living at the intestate's death who attain twenty-one or marry under that age of any child of the intestate who predeceases the intestate. Such issue will take through all degrees according to their stocks the share which their parent would have taken if living at the intestate's death. No issue will take whose parent is living at the intestate's death.

If the property is divisible into shares, any money or property

which, by way of advancement or on marriage, has been paid to a child by the intestate, or settled or covenanted to be paid or settled on marriage, or acquired by any issue of the intestate under his will (sect. 49) is to be taken as paid, &c. in or towards satisfaction of the child's or issue's share unless a contrary intention is expressed or appears from the circumstances, and is to be brought into account at a valuation, the value to be reckoned at the intestate's death. (Sect. 47 (1).) "The will of an intestate" sounds curious, but "intestate" in this part of the Act includes a person who dies partially intestate. (Sect. 49.)

If the trusts in favour of issue fail because no child or other issue attains a vested interest, the residuary estate is to go as if the intestate had died without leaving issue living at his death. (Sect. 47 (2).)

Where the residuary estate devolves on a class of relatives other than the intestate's issue, it is to be held on trusts corresponding to the statutory trusts for issue, but without the hotchpot provision. (Sect. 47 (3).) Thus, if the intestate left no issue and no parent, but brothers and sisters, nephews and nieces, and great-nephews and great-nieces, the persons entitled would be the brothers and sisters and any nephews and nieces alive at the intestate's death who were the children of a deceased brother or sister, and any grandnephews and grandnieces then alive who were the children of a nephew or niece then dead who was the child of a brother or sister of the intestate then dead. The nephews and nieces would take *per stirpes* and so would the grandnephews and grandnieces. No nephew or niece would share if he or she was the child of a brother or sister of the intestate then alive. Similarly, no grandnephew or grandniece would share if the nephew or niece or brother or sister through whom he or she could claim was then alive.

The statutory power of advancement and the statutory provisions relating to maintenance and accumulation of surplus income apply, but when an infant marries, he or she will be entitled to give valid receipts for the income of his or her share or interest. (Sect. 47 (1).) The personal representatives may permit an infant contingently interested to have the use and enjoyment of personal chattels. (*Ibid.*)

References to a child or issue living at the death of any person include a child or issue *en ventre sa mère* at the death. (Sect. 55 (2).)

(4) Redemption of husband's or wife's life interest.—The personal representative may purchase or redeem the life estate of the husband or wife with his or her consent (or with the leave of the Court if the husband or wife is the sole personal representative), by paying the capital value, and may raise any money required for the purpose on the security of any part of the residuary estate, other than the personal chattels. They have a similar power to mortgage to raise the 1,000*l.* to which the husband or wife is absolutely entitled. (Sect. **48.**)

(5) Partial intestacy.—The above provisions apply to a partial as well as a total intestacy but subject to the provisions contained in the will and subject to any issue of the deceased bringing into hotchpot any beneficial interest received under the will, and the personal representative is trustee for the persons entitled under this Part of the Act in respect of the part of the estate not expressly disposed of unless it appears by the will that he is intended to take such part beneficially. (Sect. **49**, replacing the Executors Act, 1830, which is repealed.) The provision as to hotchpot is an innovation. In cases of partial intestacy occurring before 1926, no account is taken of benefits received under the will or of advances in testator's lifetime. (*Re Roby*, (1908) 1 Ch. 71.) Apparently an executor loses his former right to take undisposed of personalty in the absence of relations; the Crown seems to be entitled, unless the will shows an intention that the executor should take.

(6) Construction of documents.—In an instrument *inter vivos* made, or in a will coming into operation, after 1925, references to any Statutes of Distribution are to be construed as references to this Part of the Act, and references to statutory next of kin are to be construed, unless the context otherwise requires, as referring to the persons beneficially entitled on an intestacy under this Part of the Act. Trusts declared in instruments *inter vivos* made, or wills coming into operation, before 1926, by reference to the Statutes of Distribution are to be construed, unless the contrary thereby appears, as referring to the old Acts, excluding the Intestates' Estates Act, 1890. (Sect. **50.**)

(7) Lunatic.—The old law of descent of real estate is still to apply to realty to which a lunatic or defective of full age at the commencement of the Act is beneficially entitled, if he dies after 1925 intestate without having recovered his testamentary capacity.

He will not be deemed to have recovered his testamentary capacity unless his committee or receiver has been discharged. "Real estate" here does not include chattels real; they are subject to the new law, as are also chattels personal. (Sect. **51** (2).)

(8) Infant.—A very important provision is contained in sect. 51 (3). "Where an infant dies after the commencement of this Act without having been married, and independently of this subsection he would, at his death, have been equitably entitled under a settlement (including a will) to a vested estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, such infant shall be deemed to have had an entailed interest, and the settlement shall be construed accordingly."

This means, apparently, that his interest is to cease, for, as he has died unmarried, the hypothetical entail must be at an end, and an infant is expressly excluded from the new statutory power to dispose of an entailed interest by will. Apparently, therefore, the subsection partially repeals the Wills (Soldiers and Sailors) Act, 1918, as regards real estate; an infant soldier or sailor apparently will only be able to make a will of real estate if he has been married. *Sed quære.*

PART V.

SUPPLEMENTAL. (Sects. 53 to 58.)

General savings.—Sect. **53** (1) and (2) saves the powers of the High Court existing independently of the Act, and the provisions of any unrepealed enactment in a public general Act dispensing with probate or administration as respects personal estate, not including chattels real.

Death duties.—The Act is not to alter any death duty payable in respect of real estate or impose any new duty thereon, nor to render real estate liable to legacy duty or exempt it from succession duty, nor to alter the incidence of the death duties. (Sect. 53 (3). Cp. sect. 33 (6).)

Application of Act.—It only applies to deaths after 1925, except as otherwise expressly provided. (Sect. **54.**)

Definitions are contained in sect. **55.** The most important have already been referred to.

Crown is bound by the Act as respects the estates of persons dying after 1925, as are also the Duchy of Lancaster and the Duke of Cornwall, but not so as to affect the time within which proceedings for the recovery of real or personal estate vesting in or devolving on His Majesty in right of His Crown, or His Duchy of Lancaster, or on the Duke of Cornwall may be instituted. The Act does not affect or alter the descent or devolution of property vested in His Majesty in right of His Crown or of the Duchy of Lancaster or belonging to the Duchy of Cornwall. (Sect. **57.**)

FIRST SCHEDULE.

PART I.—*Rules as to Payment of Debts where the Estate is Insolvent.*

PART II.—*Order of Application of Assets where the Estate is Solvent.*

[See under sect. 34, *ante*.]

SECOND SCHEDULE.

ENACTMENTS REPEALED.

[See *ante*, pp. 314, 315, and Table of Repealed Enactments, *ante*, p. xiii.]

LAND CHARGES ACT, 1925.

VERY important changes were made in the Land Charges Registration and Searches Act, 1888, by L. P. A. 1922 and 1924. The Land Charges Act, 1925, now incorporates these changes in the consolidation which it effects of the statutory provisions on the subject. The Act of 1925—which, for brevity, we refer to simply as L. C. A.—replaces, with the amendments effected by L. P. A. 1922 and 1924, sects. 4, 7, 10 and 11 of Judgments Act, 1839; sect. 24 of Court of Chancery (Lancaster) Act, 1850; sects. 3, 12, 13 and 14 of Judgments Act, 1855; sect. 22 of Law of Property Amendment Act, 1859; sect. 2 of Crown Debts and Judgments Act, 1860; sect. 2 of Lis Pendens Act, 1867; sect. 2 of Conveyancing Act, 1882; and the whole of Land Charges Registration and Searches Act, 1888, and of Land Charges Act, 1900. The sections referred to below are those of L. C. A., unless otherwise stated.

The Act is arranged as follows:—

Preliminary. (Sect. 1.)

Part I.—Pending Actions. (Sects. 2 and 3.)

Part II.—Annuities. (Sects. 4 and 5.)

Part III.—Writs and Orders affecting Land. (Sects. 6 and 7.)

Part IV.—Deeds of Arrangement. (Sects. 8 and 9.)

Part V.—Land Charges. (Sects. 10 to 14.)

Part VI.—Local Land Charges. (Sect. 15.)

Part VII.—Searches and Official Searches. (Sects. 16 and 17.)

Part VIII.—General. (Sects. 18 to 26.)

Schedule. Repeals.

PRELIMINARY. (Sect. 1.)

Registers to be kept.—As at the present time, the Chief Land Registrar must keep at the Land Registry registers of (a) pending actions, (b) annuities (but see below), (c) writs and orders affecting land, (d) deeds of arrangement affecting land, and (e) land charges, in the manner prescribed (sect. **1**), *i.e.*, prescribed by rules made pursuant to the Act. (Sect. 20.) As to the making of rules, see sect. 19. Where a charge or other matter is capable of registration under two or more heads, it will be sufficient to register under one head. (Sect. **21.**) In reading what follows the definition of purchaser should be borne in mind. It means, except where otherwise appears, "any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land." (Sect. **20.**)

PART I.

PENDING ACTIONS. (Sects. **2** and **3.**)

Pending actions.—A pending action means any action, information or proceeding pending in Court relating to land or any interest in or charge on land, and a petition in bankruptcy filed after 1925. (Sect. 2.) Unless registered, and re-registered every five years, a pending action will not bind a purchaser (*i.e.*, a person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land (sect. 20)) without express notice. (Sect. 3.) There are, however, special provisions as to a bankruptcy petition, which, as read with sects. 6 and 7, *post*, appear to have the following effect:—

Registration of petition and receiving order.—Every petition in bankruptcy filed after 1925 may and should be registered as a pending action. Where the petition is against a firm, the registration will be effected against each partner as well as against the firm. Registration ceases to have effect after five years, but may be renewed. (Sect. 2.) If the petition is not registered it will not bind a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy, and without express notice of the petition; nor, as respects any transfer or creation of a legal interest, will the unregistered petition be notice or evidence of any act of bankruptcy therein alleged. (Sect. 3.)

Moreover, every receiving order made after 1925 may and should be registered as an order affecting land under the L. C. A. s. 6, whether or not it is known to affect land. Here, too, registration is effective for five years only, but may be renewed (L. C. A. s. 6), and if not registered the receiving order will be void against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy. (*Ibid.* sect. 7.)

The title of a trustee in bankruptcy acquired after 1925 will be void as against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy, claiming under a conveyance made after registration of petition, unless at the time of conveyance either (1) the registration of the pending action is in force, or (2) the receiving order is registered. (L. C. A. ss. 3 (3) and 7 (2).)

These provisions are not too easy to follow, and how they affect the provisions of the Bankruptcy Act, 1914, is very difficult to say. They must be read with sect. 198 of L. P. A. (*ante*), which makes registration of any instrument or matter in any register kept at the Land Registry actual notice of such instrument or matter. So read, the effect appears to be as follows:—If the petition is registered as a pending action and the registration is in force, *i.e.*, apparently if not more than five years have elapsed without renewal of registration, even a purchaser of the legal estate will get no title to the property, for he will have notice of the petition, and, therefore, of an act of bankruptcy if in fact such an act has been committed. And if a receiving order has been made and registered the case is *à fortiori*, for there is nothing in the Bankruptcy Act, 1914, to protect him when he buys after receiving order, except where the property has been acquired by the bankrupt after the date of adjudication, in which case a *bonâ fide* purchaser who buys before the trustee has intervened to claim the property is protected by sect. 47, embodying and extending the *Cohen* v. *Mitchell* rule, and there is nothing in L. C. A. to protect a purchaser where the receiving order is duly registered. Indeed, it is quite open to argument that the L. C. A. has abrogated sect. 47 of the Bankruptcy Act, 1914. In this state of the law a search is more than ever necessary before completion of a purchase.

So much for the position if the petition or receiving order is registered. If the petition is not registered, a purchaser of a legal estate in good faith for money or money's worth without notice of

an available act of bankruptcy will get a good title, at any rate if he buys without express notice of the petition, and perhaps even if he has such notice, for this unregistered petition is not to be notice or evidence of any act of bankruptcy therein alleged. And this protection of a purchaser of a legal estate will continue even after the receiving order, unless the receiving order is registered. There is no protection in the L. C. A. for purchasers of equitable interests only, but if there is no registration of the petition, and they acquire their title before the receiving order is made, and without notice of an available act of bankruptcy, they will be protected by sect. 45 of the Bankruptcy Act, 1914.

Special provisions as to bankruptcy in connection with registered land are contained in L. R. A. s. 61, *post*, p. 365.

Searches.—In view of the importance of searching the registers at the Land Registry for bankruptcy petitions and receiving orders, it is fortunate that an official search will, after 1925, be obtainable as regards these matters as well as any others registered at the Land Registry. (L. C. A. s. 17, *post*.)

PART II.

ANNUITIES. (Sects. 4 and 5.)

Annuities.—No annuity is to be entered in the register of annuities after 1925, but annuities already registered may remain registered until the entry is vacated in the prescribed manner, on the prescribed evidence as to satisfaction, cesser or discharge being furnished. When all existing entries have been vacated the register is to be closed. (L. C. A. s. **4.**) An annuity which before the Act was capable of being registered will be void against a creditor or a purchaser of any interest in the land charged therewith unless it is for the time being registered in the register of annuities, or in the register of land charges. (Sect. **5.**) And it is to be noted that it will be void even if the creditor or purchaser has notice, *Greaves* v. *Tofield*, 14 Ch. D. 563, being superseded by the provisions of sect. 199 (1) of L. P. A.

Annuity here has the same meaning as in the Judgments Act, 1855, which first provided for the registration of annuities. It means "a rent-charge or annuity for one or more life or lives, or for any term of years or greater estate determinable on one or more

life or lives created after the 25th day of April, 1855, and before the commencement of this Act, and not being a rent-charge or an annuity created by a marriage settlement or will."

Such an annuity created after 1925 will not be capable of registration. As it will only constitute an equitable interest, a purchaser of a legal estate will take free from it if he has no notice of it, and if he has notice it will be capable of being over-reached by the procedure laid down in sect. 2 (2) of L. P. A. *ante*.

A perpetual rent-charge or a rent-charge for a term of years absolute, it will be remembered, constitutes a legal interest. (L. P. A. s. 1, *ante*.)

PART III.

WRITS AND ORDERS AFFECTING LAND. (Sects. **6** and **7**.)

Writs and orders affecting land.—In this register there may and should be registered and re-registered every five years—(a) any writ or order affecting land issued or made by any Court for the purpose of enforcing a judgment, statute or recognizance, whether obtained on behalf of the Crown or otherwise, or for the purpose of enforcing any inquisition finding a debt due to the Crown, or any obligation or specialty made to the Crown; (b) any order appointing a receiver or sequestrator of land; (c) any receiving order in bankruptcy made after 1925, whether or not it is known to affect land. (L. C. A. s. 6.) If not registered, the writ or order, and any delivery in execution or other proceeding taken pursuant to the writ or order, will be void as against a purchaser of the land, but as regards a receiving order in bankruptcy this protection is limited. (Sect. 7; see *ante*, under Pending Actions.) As to the registration operating to charge the land, see L. P. A. s. 195, *ante*.

PART IV.

DEEDS OF ARRANGEMENT. (Sects. **8** and **9**.)

Deeds of arrangement.—A deed of arrangement, as defined by the Deeds of Arrangement Act, 1914, affecting land may and should be registered and re-registered every five years in the name of the debtor. The registration may be made on the application of a trustee of the deed, or of a creditor assenting to or taking the benefit of the deed. In the case of deeds registered before the

1st January, 1926, the whole of 1926 is allowed in which to effect any necessary re-registration. (L. C. A. s. 8.) Formerly no re-registration was necessary. Unless the deed is duly registered it will be void as against a purchaser of any land comprised in or affected by the deed, whether the deed was made before or after the commencement of the Act. (Sect. 9.) It is immaterial whether the purchaser has notice of the deed or not. (L. P. A. s. 199 (1).)

PART V.

LAND CHARGES. (Sects. **10** to **14.**)

Land charges.—The most important alteration effected by the L. C. A. is the great extension which it makes in the meaning of "land charge." By sect. **10** the following classes of charges on, or obligations affecting, land may (and should) be registered in the register of land charges, namely:—

Class A.—A rent or annuity, or principal money payable by instalments or otherwise, with or without interest, being a charge (otherwise than by deed) upon land pursuant to the application of some person before or after the commencement of this Act (i) under the provisions of any Act of Parliament, for securing to any person either the money spent by him or the costs, charges and expenses incurred by him under such Act, or the money advanced by him for repaying the money spent, or the costs, charges and expenses incurred by another person under the authority of an Act of Parliament; or (ii) under sect. 35 of the Land Drainage Act, 1861; or (iii) under sect. 20 or sect. 41 of the Agricultural Holdings Act, 1923, or any previous similar enactment; or (iv) under sect. 4 or sect. 6 of the Tithe Act, 1918; or (v) under sect. 1 of the Tithe Annuities Apportionment Act, 1921; or under para. (6) of the 12th Sched. to L. P. A. 1922 (see *ante*, p. 71); but not including a rate or cess.

[These are the statutory land charges which are registrable at the present time. Those which follow are new. A land charge of this class (Class A.) for securing money will, when registered, take effect as if it had been created by a charge by way of legal mortgage, but without prejudice to the priority of the charge. (Sect. 11.)]

Class B.—A charge on land (not being a local land charge (see sect. 15, *post*)) of any of the kinds described in Class A. created

otherwise than pursuant to the application of any person, either before or after the commencement of this Act, but if created before such commencement only if acquired under a conveyance made after such commencement.

[Under the Land Charges Act, 1888, registration was only required if the charge was made on the application of some person. (*R.* v. *Land Registrar*, 24 Q. B. D. 178.)]

Class C.—A mortgage, charge or obligation affecting land of any of the following kinds, whenever created, but if created before 1926 only if acquired under a conveyance made after 1925, namely:—

(i) Any legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected, and (where the whole of the land affected is within the jurisdiction of a local deeds registry) not being registered in the local deeds register (in this Act called a "puisne mortgage"); and

[If the charge is created by a company, registration under sect. 93 of the Companies (Consolidation) Act, 1908, will be sufficient in place of registration under this Act. (Sect. 10 (5).) A puisne mortgage created before 1926 may be registered before any transfer of the mortgage is made. (*Ibid.* (7).)]

(ii) Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in this Act called "a limited owner's charge"); and

(iii) Any other equitable charge, which is not secured by a deposit of documents relating to the legal estate affected and does not arise or affect an interest arising under a trust for sale or a settlement and is not included in any other class of land charge (in this Act called "a general equitable charge"); and

(iv) Any contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption or

any other like right (in this Act referred to as "an estate contract").

[This includes a contract to make a settlement of land entered into by an estate owner and, in some instances, by persons who are not yet estate owners. (See sect. 11 of S. L. A., *ante*).]

Class D.—A charge or obligation affecting land of any of the following kinds, namely:—

(i) Any charge acquired by the Commissioners of Inland Revenue under any statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after 1925; and

[But the Commissioners can only register a charge if the duty has become a charge on the land, and they must state the duties in respect of which the charge is claimed and define the land affected. (L. C. A. s. 10 (4).)]

(ii) A covenant or agreement (not being a covenant or agreement made between a lessor and lessee) restrictive of the user of land entered into after 1925 (in this Act referred to as "a restrictive covenant"); and

(iii) Any easement, right or privilege over or affecting land created or arising after 1925, and being merely an equitable interest (in this Act referred to as an "equitable easement").

[If the land is in Yorkshire, registration of an equitable easement, restrictive covenant, estate contract, or general equitable charge effected in the local deeds registry, will take the place of registration under this Act. (Sect. 10 (6).)]

Class E.—An annuity (as defined by sect. 4, *ante*) created before 1926 and not registered in the register of annuities.

Registration of the above land charges is to be made in the name of the estate owner whose estate is intended to be affected. (Sect. 10 (2).) If it is not created by an instrument, short particulars of the effect of the charge must be furnished. (*Ibid.* (3).) The expense of registering will be deemed part of the charge, and will be recoverable on the next day for payment of any part of the charge, but this does not apply to the cost of registering an

annuity, restrictive covenant, equitable easement or estate contract. (Sect. **12**.)

As to the effect of non-registration.—A land charge of Class A. created after 1888 is void against a purchaser of the land or of any interest in the land if not registered before the completion of the purchase (sect. **13** (1)), and so is a land charge of Class A. created before 1889, if it is not registered within one year from the first conveyance of it after 1888. (Sect. **14** (1).)

A land charge of Classes B., C. or D. created or arising after 1925 will be void against a purchaser of the land charged or of any interest in the land if not registered before the completion of the purchase, but, in the case of a charge of Class D. and an estate contract, only against a purchaser *of a legal estate for money or money's worth*. (Sect. 13 (2).) Further, a charge of Class B. or Class C. created before 1926 will not be enforceable against a purchaser if not registered within a year from the first conveyance of the charge occurring after 1925. (Sect. 14 (2).) Cp. para. 6 of Part VII., and para. 5 of Part VIII. of 1st Schedule to L. P. A. (*ante*, p. 131), which prevents a puisne mortgage existing before 1926 from gaining any advantage against a purchaser without notice unless protected by deposit of documents or registered.

With regard to all these charges, &c., which are capable of registration under the provisions of L. C. A. or any enactment which it replaces, it must be remembered that a purchaser will not be prejudicially affected by notice of them if they are void or not enforceable against him by reason of non-registration. (L. P. A. s. 199 (1).) On the other hand, registration is equivalent to actual notice. (*Ibid.* s. 198.)

PART VI.

Local Land Charges. (Sect. **15**.)

Local land charges.—A local land charge means "any charge acquired, either before or after the Act, by the council of any administrative county, metropolitan borough, or urban or rural district, or by the corporation of any municipal borough, or by any other local authority under the Public Health Acts, 1875 to 1907, the Metropolis Management Acts, 1855 to 1893, or the Private Street Works Act, 1892, or any other similar statute (public general, or local or private) passed or hereafter to be passed, which takes effect by virtue of the statute." Such a charge must be registered

in the prescribed manner by the proper officer of the local authority, and such registration by him in his register will take the place of registration in the Land Registry, though it may be registered there also. Special rules may be made in reference to local land charges.

A local land charge will be void as against a purchaser for money or money's worth of a legal estate in the land affected thereby unless registered before the completion of the purchase, except where the charge was created or arose before 1926, in which case there is no obligation to register until after 1926. During 1926, therefore, a purchaser must not be content with searching the local register; he must also inquire, as at present, whether there are any charges created before 1926 and not registered. After 1926 he need only search the register.

If a local land charge is not registered when it ought to be, a purchaser of a legal estate for money or money's worth will take free from it even if he has notice. (L. P. A. s. 199 (1).)

Restrictions on the user of land or buildings enforceable by a local authority by virtue of any statute or any order, scheme or instrument made in pursuance of any statute, and any resolution passed by a local authority to prepare or adopt a town planning scheme is to be deemed a restrictive covenant, and if arising or passed after 1925 must be registered as a local land charge.

Sect. 15 applies to local land charges affecting registered as well as unregistered land.

PART VII.

Searches and Official Searches. (Sects. 16 and 17.)

Searches.—The provisions of the Judgments Act, 1855, ss. 12 and 13, C. A. 1882, s. 2, and Land Charges Registration and Searches Act, 1888, ss. 16 and 17, with regard to searches, are replaced by sects. **16** and **17** of L. C. A. On payment of the prescribed fee, any person may search any register or index kept under L. C. A. (sect. 16) and may have an official search made. An official certificate of search will be conclusive, affirmatively or negatively, in favour of a purchaser or intending purchaser. Where a solicitor obtains an official certificate he will not be answerable for any loss arising from error in the certificate, nor will the trustees, executors, agents, &c. for whom he is acting. Such persons will similarly be protected if they obtain such a certificate without a solicitor. (Sect. 17.)

Searches outside the Land Registry for bankruptcy proceedings will not be necessary after 1925, for the petition and receiving order are registrable respectively as a pending action and an order affecting land. (See sects. 2 and 6, *ante*.)

PART VIII.

GENERAL. (Sects. 18 to 26.)

Middlesex, instruments not required to be registered in.—Sect. 18 of L. C. A., repeating in an extended form sect. 4 of Land Charges Act, 1900, provides that it is not necessary to register under the Middlesex Registry Act, 1708, the following instruments which are capable of registration under the L. C. A.:—(a) Any deed of arrangement, land charge of Class A. or other instrument made or created after 30th July, 1900; or (b) any land charge (except a puisne mortgage) of Classes B., C. or D. created or made after 1925.

Rules to carry out the Act may be made. (Sect. **19.**)

Definitions.—These are contained in sect. **20.** The most important have been incorporated in the text.

Saving of overreaching powers.—The registration of any charge, annuity, or other interest under L. C. A. will not prevent the charge, &c. being overreached under any other statute except where otherwise provided by that other statute. (See L. P. A. s. 2, and S. L. A. s. 21, *ante*.) The registration as a land charge of a puisne mortgage or charge will not prevent it being overreached in favour of a prior mortgagee where the right of the puisne mortgagee or subsequent chargee to redeem is barred. (Sect. **22.**)

Registered land.—The above provisions of L. C. A., except those relating to local land charges, do not apply to registered land, so far as the charges, &c. can be protected under L. R. A., by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice. (Sect. **23.**)

Repeals are contained in sect. **24** and the Schedule. (See *ante*, p. 340.)

Crown is bound by the Act. (Sect. **25.**)

Short title, &c.—The Act may be cited as the Land Charges Act, 1925, is to come into operation on 1st January, 1926, and extends only to England and Wales. (Sect. **26.**)

UNIVERSITIES AND COLLEGE ESTATES ACT, 1925.

The Universities and College Estates Acts, 1858 to 1898, and 18 Eliz. c. 6, are repealed and re-enacted in a consolidated form, together with the amendments effected by L. P. A. 1922 and 1924, by the Universities and College Estates Act, 1925, which contains 45 sections and two Schedules.

The amendments are mainly in the direction of assimilating the powers of disposition over university and college estates to those of a tenant for life under S. L. A., but it should be noted that the terms of lease are not increased but remain at 99 years for building, 60 for mining, and 21 for any other purpose. (Sect. 6.) Thus the following additional powers are given to a university or college:— (1) To sell in consideration of a rent-charge (sect. 3). (2) To grant water rights to statutory bodies (sect. 14). (3) To grant land, with the consent of the Minister of Agriculture and Fisheries, for public and charitable purposes (sect. 15). (4) To dedicate land for streets, open spaces, &c. not only on a sale, grant, or lease for building purposes, but also after such sale, grant, or lease, or at any other reasonable time (sect. 16). (5) To compromise claims and release restrictions, &c. (sect. 17). (6) To vary leases and grants (sect. 18). (6) To apportion rents (sect. 19). (7) To effect any transaction under an order of the Minister of Agriculture and Fisheries (sect. 21). (8) To deal separately with surface and minerals for the purpose of any authorised disposition (sect. 22). (9) To grant options to purchase or lease (sect. 23). (10) To raise money, with the consent of the Minister, for additional improvements

(sect. 30), provision being made for the discharge of money borrowed on mortgage (sect. 32). (11) To transfer rights of patronage to a bishop or other ecclesiastical corporation gratuitously. (Sect. 37.)

Further, the number of investments in which capital money arising under the Act may be invested is increased. (Sect. 26.)

The bodies within the Act are the Universities of Oxford, Cambridge and Durham, and their colleges or halls, including "the Cathedral or House of Christchurch in Oxford," and Winchester and Eton. (Sect. 1.) The Act applies not only to land held as the property or for the general purposes of the university or college, but also to land held upon any trusts, or for any special endowment or other purposes, connected with the university or college. (Sect. 41.)

LAND REGISTRATION ACT, 1925.

The Land Transfer Act, 1875, and Land Transfer Act, 1897, Part II., together with the amendments contained in the Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924, are consolidated by the Land Registration Act, 1925 (here referred to as L. R. A.), and the system of registration of title in future will therefore depend on this last mentioned Act. Incidentally certain of the former Land Transfer Rules are by the Act enacted in statutory form, but the only really novel portions of the Act are those incorporating the Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924. The Act comes into operation on January 1st, 1926, but is to be deemed to come into operation immediately after L. P. A., S. L. A., L. C. A., T. A., and A. E. A. (L. R. A. s. 148.) These novel provisions are largely of a consequential character, designed to bring registration of title into line with the general changes in the law effected by the other legislation (and especially the Law of Property Act, 1925), which derives from the Law of Property Act, 1922. Hence it is that though certain independent amendments are also included, the changes in the system of registration of title are less fundamental than the changes made in other respects by the Acts. There is, however, a noteworthy alteration of the conditions under which the area of compulsory registration may be extended. This and the more noteworthy provisions of the Act effecting changes in existing law are dealt with below, and the reader will be able to judge from them the general nature and scope of the Act.

Extension of compulsory area.—Hitherto the position has been that compulsory registration could be extended to any county or part of a county whose County Council passed a resolution in favour

thereof at a meeting at which two-thirds of the members were present.

The position is now as follows. The existing power to extend the area on a resolution of a County Council to that effect is continued. (L. R. A. ss. 120, 121.) It therefore remains theoretically possible for compulsory registration to be extended at any time to the whole country, provided that there is the requisite instance on the part of the respective County Councils. This, however, is not, as far as can be judged at the moment, a probable contingency. County Councils have hitherto displayed no great desire for the system, while in any event the legislation discussed in this book was based on an understanding that a clear ten years' run should be given to it prior to any attempt being made to extend the area of compulsory registration. Such an extension in the immediate future therefore, while technically possible, would practically involve something approaching a breach of faith. Ten years after the commencement of the Act, *i.e.*, on January 1st, 1936, a further power to extend the area will come into play. (L. R. A. s. 120.) The result shortly will be that an Order in Council will be possible without any request of the County Council, subject only to certain conditions referred to below. The first such Order is not to affect more than one county, and during 1936 only one such Order can be made. (L. R. A. s. 122 (xi).) In 1937, however, such an Order will be possible as to any county, and it will be possible (whether it will happen will depend to some extent on how the new conveyancing methods coming into operation in 1926 are found to work) to extend compulsory registration throughout the country, subject only to the conditions now to be mentioned.

At any time within eighteen months of the date when the proposed Order is to take effect, notice will be given to the County Council of the area affected, who within ten days must furnish a copy thereof to any law society whose district is proposed to be affected. County Council and/or Law Society may then within six months pass a resolution that a public inquiry should be held as to the desirability of extending to the district compulsory registration of title on sale. A copy of the resolution is to be sent to the Lord Chancellor, who will, after consultation with the Law Society, appoint a practising member of the legal profession to hold the inquiry. After the report is published (or if no resolution as above is passed, and consequently no inquiry held at the expiration of the six months above mentioned)

the Lord Chancellor will decide whether he desires the Order to be made or not. If he does, he will cause the draft to be laid on the table of each House, and only if both Houses approve the draft (with or without amendment) can the Order be made. (L. R. A. s. 122.)

The provisions as to compulsory registration will in future be binding on the Crown. (L. R. A. s. 124.)

Interests capable of registration.—After the commencement of the Act only legal estates and interests will be registrable, *i.e.*, registrations will only be possible of the estates and interests which under L. P. A. are capable of legal ownership. (L. R. A. s. 2. See *ante*, p. 98.) As regards land already registered on the first dealing with any such interest after the coming into operation of the Act, any necessary rectification is to be made. (L. R. A. s. 2 (1).)

In future undivided shares and charges thereon will not be capable of registration, and the only entry on the register possible in respect of an undivided share will be a caution against dealings with the entirety. (L. R. A. s. 78 (4).) In cases of existing registrations of the sort on the occasion of the first dealing affecting the title after the commencement of the Act, the registrar is to rectify the register by entering as proprietors of the entirety the persons in whom the legal estate has become vested in virtue of the Law of Property Act, 1925 (L. R. A. s. 78 (1)), except that the Public Trustee is not to be registered till he has accepted the trust. (L. R. A. s. 78 (3).) Where, however, not all the tenants in common were registered as proprietors, and only the title to an undivided share was registered at the commencement of the Act, but the entirety was not registered, then special provision is made for dealing with the case (L. R. A. s. 78 (2)), and the entry will be removed from the register unless before such removal and within a year from the commencement of the Act the interested parties apply for registration of the entirety.

A mortgage term (formerly not capable of registration) will, where no right of redemption continues to exist, become registrable in future. (L. R. A. s. 8.) Where the mortgage was by sub-demise, and it appears that the mortgagee is in equity entitled to the superior term, he will be registered as proprietor of that term, which will thereupon vest in him, the sub-term merging. (L. R. A. s. 8 (3).)

Who may be registered as proprietor.—In future (L. R. A. ss. 4 and 8) the person who may apply for registration is either—

(a) An estate owner, *i.e.*, the owner of a legal estate (not being an infant: L. R. A. s. 3 (iv)), whether subject or not to incumbrances. This includes a tenant for life, statutory owner, personal representative or trustee for sale, but not a mortgagee where there is a subsisting right of redemption.

(b) Any other person (not being a mortgagee as aforesaid, and not being a person who has merely contracted to buy) who is entitled to require a legal estate subject or not to incumbrances to be vested in him.

Where application is made for registration of a title to leaseholds, the term must be (as formerly) for a term of years absolute of which more than twenty-one are still unexpired. (L. R. A. s. 8.)

It will be observed that it is no longer possible for a person to apply for registration merely on the ground that he has contracted to buy land or leaseholds. Formerly he could do so if vendor assented. In other respects also considerable changes are made. But they are of a consequential character. The essential qualification for registration as registered proprietor continues to be capacity to make a title to the purchaser, and the above provisions are designed to make the system of registration of title harmonise with changes in the law relating to capacity to convey.

Charges and mortgages.—Under the Land Transfer Acts the normal method of raising money on registered land has been by way of registered charge. In future a registered proprietor may either (1) give a registered charge (new provisions as to such charges being contained in the Act), or (2) mortgage the land as if it were not registered, the mortgage being protected by caution with a right in the mortgagee to convert his mortgage into a registered charge. Where a charge or mortgage (otherwise than by deposit) is registered or protected by caution, the land certificate will be deposited in the registry till the charge or mortgage is cancelled. (L. R. A. s. 65.) It will therefore no longer be possible for the mortgagee to insist on having possession of the land certificate.

(1) *Charges.*—A charge in order to be registered is required to be by deed, which may take any form provided (1) the land comprised in the charge is described by reference to the register or in any other manner sufficient to enable the land to be identified with-

out reference to any other document; and provided that (2) the charge does not relate to any other interest or charge affecting the land which (a) would have priority over the same and is not registered or protected on the register, and (b) is not an overriding interest. (L. R. A. s. 25.) Any provision contained in a charge is void which purports to deprive the proprietor thereof of the power to transfer the charge, to require its cessation to be registered, or which purports to affect any registered land or charge other than that in respect of which the charge is expressly registered. (L. R. A. s. 25.) A charge may contain any trust, power to appoint new trustees or other provisions for giving effect to the security. (L. R. A. s. 26 (2).) A charge will (subject to provisions to the contrary in the charge itself) take effect as a charge by way of legal mortgage (*i.e.*, as if a term of three thousand years had been demised to the mortgagee without impeachment of waste and subject to a proviso for cesser on redemption). (L. R. A. s. 27 (1).) In the case of leaseholds the charge operates as a sub-demise for the whole term less the last three days. The charge may also contain an express demise or sub-demise. (L. R. A. s. 27 (2)), which will take effect as from the execution of the deed but without prejudice to estates and interests (even subsequent ones) duly registered before the charge itself. (L. R. A. s. 27 (3).)

These provisions are applied retrospectively to charges made before the Act. The chargee will have a term of years and the reversion will vest in the person appearing by the register to be entitled to the equity of redemption. (L. R. A. s. 27 (4).) And the Act makes the needful adaptive provisions in reference to special circumstances, *e.g.*, transfers, discharges, &c. (Sects. 31, 32, 33, 34, 35, 36, 44.)

The registered chargee will, however, have all the powers of a legal mortgagee, and will as heretofore be able, in exercise of his power of sale, to transfer the fee simple or, in the case of leaseholds, the whole unexpired term. (L. R. A. s. 34 (1).) On notification in the register of entire cessation of a registered charge (as to the whole or any part of the land affected) the term or sub-term will automatically merge in the reversion. (L. R. A. s. 35.) No conveyancing device is to be able to divorce the term from the charge or keep the term alive after the charge has ceased. (L. R. A. s. 34 (5).)

Rules are to be made applying these provisions, and those of the L. P. A., to charges by way of sub-mortgage. (L. R. A. s. 36.)

Where a charge is registered in the names of two or more proprietors (whether jointly or in undivided shares), the mortgage term comprised in the charge vests in them as joint tenants, and the survivor or personal representative of the last survivor can give an effective receipt for the mortgage money. (L. R. A. s. 32.) The covenant to repay implied on the creation of a registered charge will in future be to pay the agreed rate of interest "as well after as before any judgment is obtained." (L. R. A. s. 28.) The object of this is apparently to prevent judgment from reducing the rate of interest on the security from any higher rate mentioned in the covenant to the 4 per cent. provided for by the Judgments Act, 1838, on the ground that the debt has become merged in the judgment. (See *Economic Life Assurance Society* v. *Usborne*, (1902) A. C. 147.)

An important new provision (*post*, p. 363) deals with the acquisition by a registered chargee of a title under the Statutes of Limitation. A provision as to covenants for further advances assimilates registered land to unregistered land as regards the tacking of further advances. (See *ante*, p. 156.) Where a registered charge secures further advances, the registrar, before making any entry on the register which would prejudice the priority of any further advance, must give to the proprietor of the charge notice by registered post of the intended entry, which entry will not prejudice further advances unless made after the date when such notice ought to have been received in due course of post. (L. R. A. s. 30.)

(2) *Mortgages.*—A registered proprietor may in future mortgage the registered land by deed or otherwise as if it were not registered land. Thus he can mortgage by way of demise or of sub-demise or of charge by way of legal mortgage, provided the land is described (by reference to the register or otherwise) in a way sufficient to enable the registrar to identify it without reference to any other document. (L. R. A. s. 106 (1).) This mortgage may be protected by a caution which, where the mortgage is by deed, will be in a specially prescribed form. (L. R. A. s. 106 (2).) Till the mortgage is protected by caution it will take effect in equity only and can be overridden by the registered proprietor (L. R. A. s. 106 (4).) The lodging of a caution will not enable the mortgagee to effect any dealing with the land on the register except that it will enable him at any time to require the mortgage to be registered as a charge with the same priority as the caution, when the mortgagee

will have all the powers of a registered chargee. (L. R. A. s. 106 (5) and (6).) Before the mortgage can be registered as a charge, sufficient evidence of title must be furnished to the registrar. But the mortgage can be registered as a charge notwithstanding the disclosure of any unregistered interest or charge having priority to the mortgage. Neither the registrar nor any person interested under a registered disposition shall be affected with notice of any such interest or charge. (L. R. A. s. 106 (5).) The mortgage will devolve and may be transferred, discharged, reconveyed, &c. as if the land were not registered, but (1) if the mortgage is registered as a charge devolutions and dealings must be registered as in the case of a registered charge; (2) where the mortgage is protected by caution in the specially prescribed form, devolutions and dealings are to be similarly protected; (3) subject to any entry to the contrary on the register, priorities will depend on order of application for registration or entry of a caution in specially prescribed form. (L. R. A. s. 106 (7).)

Mortgages and charges by limited companies.—Where a company is registered as proprietor, mortgages and charges must, it is expressly provided, be registered under this Act, even though they are also registered under the Companies (Consolidation) Act, 1908. (L. R. A. s. 60.)

Conversion of possessory into absolute or good leasehold title.—New powers are given to the registrar in this respect. (L. R. A. s. 77.)

Where land has been registered with a possessory title before the commencement of the Act, and the registrar is satisfied as to title, the title *may* at any time be converted into absolute or good leasehold title without consent of the registered proprietor. (L. R. A. s. 77 (1).) On the occasion of a transfer for value, qualified, good leasehold, or possessory title *may* be converted into absolute or good leasehold title without the consent of the transferee. (L. R. A. s. 77 (2).) These conversions are not, however, where they are involuntary, to involve registered proprietor or transferee in additional fee.

Further, where registration with possessory title has lasted fifteen years (ten in cases of leaseholds), if the registrar is satisfied that the registered proprietor is in possession he *must*, after the prescribed notices have been given, convert the title into an absolute one (or in

the case of leaseholds into a good leasehold title). But the registrar may defer this conversion for further inquiry as to title where the first registration was before 1st January, 1909. (L. R. A. s. 77 (3).)

Finally, where the registered proprietor with good leasehold title has been in possession for ten years power is given subject to conditions to convert the title into absolute title. (L. R. A. s. 77 (4).)

All the above powers can only be exercised subject to no claim adverse to the title having been made and remaining undisposed of. (L. R. A. s. 77 (5).)

On an application for registration with possessory title the registrar may register absolute or good leasehold title without the applicant's consent, but also without additional charge. (L. R. A. s. 4.)

Estate of registered proprietor.—Hitherto the registered proprietor has been able to convey the registered property by registered disposition in virtue of an overriding statutory power, and irrespective of whether the legal estate was vested in himself or not, as indeed it frequently is not. "The register of proprietors is not material for ascertaining where the legal estate is," as Cozens-Hardy, L.J., observed in *Capital and Counties Bank* v. *Rhodes*, (1903) 1 Ch. 631. In future, however, this is altered.

The registration of a registered proprietor will vest in him *ipso facto* the legal estate in fee simple, or in the case of a leasehold interest, the whole of the unexpired term—indeed registration even before the Act is to be deemed to have always had this effect. (L. R. A. s. 69 (1).) The scheme of the Act is in fact to secure that the registered proprietor shall be the person who would be the estate owner of unregistered land (thus, even where a tenant for life of full age or statutory owner is registered, the legal estate in fee simple will be in him). Hence there are provisions vesting in the registered proprietor outstanding terms which have become satisfied, or estates which the registered proprietor has become entitled to require to be conveyed to him, and provisions for vesting the legal estates in persons registered as first proprietor in a compulsory area after the commencement of the Act where failure to register on the occasion of previous sales has caused the legal estate to be outstanding. (L. R. A. s. 69 (3).) Although, however, the legal estate is thus vested in the registered proprietor, this is

only subject to the overriding interests, if any, affecting the property.

Powers of registered proprietor.—The scheme of the Act is not only to make the registered proprietor the "estate owner," but also to confer on him as ample power of dealing with the registered land (subject, of course, to entries on the register) as would be possessed by the estate owner of unregistered land. Thus a proprietor with absolute title will be able to transfer to a purchaser the rights and interests which would under the L. P. A. have been transferred if the land had not been registered, subject (1) to the incumbrances and other entries, if any, appearing on the register, and (2) to the overriding interests, if any (see definition, *post*, p. 369), affecting the property (unless the contrary is expressed on the register). (L. R. A. s. 20 (1).) This, however, is of course very much what the result was formerly, though "overriding interests" replaces the former liabilities, &c. "declared not to be incumbrances," and the proprietor gets such additional powers of conveyance as the L. P. A. confers on owners of unregistered land, so that there is some slight increase in rights which his conveyance will override. (See definition of "minor interests," *post*, p. 369.)

Hitherto it has been possible to effect the conveyance of the legal estate even in registered land by conveyance off the register. Such a conveyance was liable, of course, to be defeated by a subsequent registered disposition, but it might be effective to pass the legal estate. (*Capital and Counties Bank* v. *Rhodes*, (1903) 1 Ch. 631.) The registered proprietor will in future only be able to dispose of the legal estate vested in him in manner authorised, and though the Act does to some extent authorise unregistered conveyances, this is subject to limiting conditions of some stringency. (L. R. A. s. 69 (4).) Subsidiary conveyances off the register in respect of registered land, where the transaction is capable of being effected by registered disposition and is so effected, shall (subject to any exceptions which rules may prescribe) be void so far as the transaction is effected by the registered disposition itself. (L. R. A. s. 39.)

Unregistered dealings with registered land.—Where, however, the proposed dealing with the land is not one capable of registration, it may be carried out off the register, any person, whether the proprietor or not, who would have power to deal with the land

if it were unregistered, possessing the same power in respect of registered land. But any such dealing will only take effect in equity, and any interest or right disposed of thereby will take effect only as a "minor interest." (Sect. 101.) This is subject to exceptions necessary to put registered on the same footing as unregistered land. (Sects. 103 and 104.) Thus in respect of unregistered land certain leases may take effect at law, though not granted by the estate owner (L. P. A. s. 8 (1), *ante*, p. 109), and sect. 104 produces a similar result as regards registered land.

Conveyances on sale.—Where unregistered land situate within a compulsory area is the subject of a conveyance on sale, the conveyance will after the commencement of the Act be void as regards the legal estate unless the person who thereby becomes entitled to registration applies for registration within two months (extendible in special cases). (L. R. A. s. 123 (1).) Rules may be made providing for the detailed application of this provision. (L. R. A. s. 123 (2).)

Conveyance on sale, however, will not for this purpose include an enfranchisement (as it has apparently hitherto done), whether the enfranchisement is under the Law of Property Act, 1922, or otherwise, but it will include an exchange where money is paid for equality of exchange (as, perhaps, it has not done hitherto). (L. R. A. s. 123 (3).) But the Act will apply to land enfranchised under the Law of Property Act, 1922, after enfranchisement (L. R. A. s. 3 (viii)), though it is not to be registered until the registrar has ascertained that all fines, &c. (if any) payable in respect of the transaction have been paid. (L. P. A. 1922, s. 129 (5).) Provision is made for a certificate being given by the steward on this point. (L. P. A. 1922, s. 129 (6).)

Registered land may be described by means of a verbal description and a filed plan or general map based on the ordnance map, or by reference to a deed or other document a copy or extract whereof is filed at the registry containing a sufficient description and a plan or map or otherwise as applicant may desire and the registrar or Court approve, but wherever practically possible the boundaries of freehold land and all requisite details are to be entered on the register or filed plan or general map, which plan or map is to be used to assist identification. (L. R. A. s. 76.)

These provisions will, of course, affect conveyancing practice as regards sales of registered land. The result is to enable the ordinary

forms of conveyance to be used in connection with registered land, the conveyance operating as from execution but becoming void unless registered in due time. The provisions of the L. P. A. (see sects. 73—75, L. P. A., *ante*) as to execution of a conveyance on sale apply as far as applicable to transfers of registered land (L. R. A. s. 38), and the registrar is to give effect by registration to vesting orders or vesting declarations on the appointment of new trustees, &c. (L. R. A. s. 47.) Vesting instruments under any statutory power are similarly to be given effect to by registration. (*Ibid.*)

Where land is registered with possessory title, applications to register a transfer must, subject to any provisions to the contrary to be prescribed, be accompanied by all the documents relating to the title (including contracts, abstracts, counsel's opinions, &c.) in the applicant's possession; where the title is qualified, such documents (if any) as relate to the qualification. (L. R. A. s. 77 (3).)

Fresh provisions are made as to the evidence of title to be furnished on a sale of registered land. (L. R. A. s. 110.)

A purchaser will not, as hitherto, be entitled to registration merely in virtue of his contract. (L. R. A. s. 8.)

Statutes of Limitation and registered land.—The effect of the Real Property Limitation Acts on registered land has hitherto depended on sect. 12 of the Land Transfer Act, 1897, a by no means easy section. It is now repealed and replaced (L. R. A. s. 75) by provisions of which the effect is as follows:—

Adverse possession will give a title to registered land just as if it were not registered, except that the person in adverse possession will not obtain a legal title till he has satisfied the registrar and obtained registration for himself with absolute, good leasehold, or possessory title, as the case may be. This registration will take effect as a registration of a first registered proprietor, but without prejudice to any estate or interest protected by entry on the register which has not been statute-barred. (L. R. A. s. 75.)

Thus, suppose A., B. and C. all have interests in an estate of which A. is registered proprietor and of which X. has for many years been in adverse possession in circumstances which, if the property were not registered, would have extinguished the rights of A. and B. but not the rights of C. The legal estate continues in A. as registered proprietor, but A. will hold it in trust for X. free from B.'s

claim, but subject to C.'s claim. X. could, however, procure the legal estate by applying to the registrar to be himself registered as proprietor, but he will not as against C. be entitled to rely on the Real Property Limitation Acts, and will only be registered without prejudice to any entry on the register protecting C.'s interest.

It is provided that parties interested instead of assenting to rectification by the registrar may apply to the Court to determine questions arising under the section. (L. R. A. s. 75 (3).) If the registrar thinks that a purchaser or person deriving title under a purchaser is prejudicially affected by the rectification and ought in the special circumstances to be compensated he may award compensation out of the indemnity fund. (L. R. A. s. 75 (4).)

Notices.—Certain alterations are made in respect of these. Notice may be registered of any lease not an overriding interest. But a proprietor registered or protected on the register is not to be affected unless the lease would be binding on the proprietor by reason of its being made under a statutory power or by reason of his concurrence or otherwise, in which case also neither the consent of the proprietor nor an order of the Court will be required as will otherwise be necessary. (L. R. A. s. 48.)

Notice may be registered of the following: (a) annuities; (b) severance of mines and minerals (unless the severed mines and minerals are expressly included in the registration); (c) land charges till registered as a registered charge (*i.e.*, under this Act, which will be necessary before the land charge can be realised (L. R. A. s. 59 (2)); (d) the right of any person interested in the proceeds of sale under a trust for sale or in land subject to a settlement to require that there shall be at least two trustees; (e) dower, freebench and other like rights saved by the L. P. A. and taking effect as minor interests; (f) creditors' notices and any other right which it may be deemed expedient to protect by notice rather than caution, inhibition or restriction. (L. R. A. s. 49 (1).)

Notice of these matters, however, may not be registered where the estate, right or interest in question is capable of being overridden by the registered proprietor of the land under a trust for sale, or the powers under the S. L. A. or any other Act, or of a settlement or is capable of being protected by a restriction (except that notice may be lodged pending the appointment of trustees for sale or under a settlement). (Sect. 49 (2).) And the notice is not to prejudice

the powers of the personal representatives of the person under whose will or intestacy the right, &c. of which notice is registered arose, nor will it prejudice the powers of a trustee for sale arising independently of the Act. (Sect. 49 (3).) Dispositions by the registered proprietor will take effect subject to the estates, rights, &c. protected by notice, but only so far as they are valid and not capable of being overridden by the disposition independently of this Act. (L. R. A. s. 52.)

Power is given to make rules applying similar provisions to the acquisition of easements, &c. by prescription. (L. R. A. s. 75 (5).)

Subject to any entry on the register to the contrary and subject to the rights of persons appearing on the register as prior incumbrancers, the holder of a registered charge who has entered into possession and acquired a title under the Limitation Acts may execute a declaration in the prescribed form that the right of redemption is barred. He will then be entitled on furnishing the prescribed evidence in support to be registered as a proprietor as if he had been a purchaser under the power of sale. (L. R. A. s. 34 (2).)

Effect of bankruptcy.—Sect. 61 contains new provisions as to bankruptcy in connection with registered land. After registration of a petition as a *lis pendens* under L. C. A., *ante*, p. 341, the registrar will as soon as practicable register a "creditor's notice" against the title of any registered proprietor of land or charge thereon which appears to be affected, and it is provided that such notice shall protect the rights of all creditors and unless cancelled shall remain in force till a bankruptcy inhibition is registered. (L. R. A. s. 61 (1).) Until a creditor's notice is registered a petition filed after the commencement of the Act is not, as regards registered disposition, for money or money's worth, to be notice or any evidence of any act of bankruptcy therein alleged. (Sect. 61 (2).) As soon as practicable after a receiving order has been registered under the L. C. A., the registrar will enter a bankruptcy inhibition (sect. 61 (3)), and thereafter, unless the inhibition is vacated, no dealing affecting the estate or the charge thereon of the registered proprietor can be registered other than registration of the trustee in bankruptcy. (Sect. 61 (4).) This, however, is not to prevent dealings with interests and charges having priority over the estate of the bankrupt proprietor. (*Ibid.*)

As soon as a registered proprietor is adjudicated bankrupt his registered property, other than property of which he is trustee, vests forthwith in the trustee in bankruptcy (sect. 61 (5)), and as hitherto the trustee (or pending the appointment of a trustee, the official receiver) may be registered as registered proprietor (L. R. A. s. 42), but the trustee in bankruptcy will not be able to deal with the property until he is himself registered as proprietor (see L. R. A. s. 37, incorporating Land Transfer Act, 1897, s. 9 (6), but with the reference to devolution on bankruptcy omitted), and until he is so registered he may find himself postponed to other claimants. (Sect. 61 (6).) Thus, if A., the registered proprietor of Whiteacre, is adjudicated bankrupt, Whiteacre will vest in the trustee in bankruptcy. But if before the trustee in bankruptcy registers himself as registered proprietor A. transfers to B., who takes in good faith for value and registers himself, B.'s title will prevail against the trustee in bankruptcy unless (1) there is a "creditor's notice" registered, or (2) there is a bankruptcy inhibition registered, or (3) B. had notice of an available act of bankruptcy or of a receiving order or order of adjudication. This will be so even if the transfer itself takes place after the commencement of the bankruptcy, provided the transfer is registered in due course even though registration does not take place till after bankruptcy. (Sect. 61 (6).) And the purchaser will not be treated as having notice merely because he did not search under L. C. A., for nothing in sect. 61 is to impose any liability to search under that Act. (Sect. 61 (6).)

With regard to registered estates and charges acquired during bankruptcy, it is expressly provided that registered dispositions which would be valid against the trustee in bankruptcy under the *Cohen* v. *Mitchell* rule (now sect. 47 of the Bankruptcy Act, 1914) are not to be prejudiced by anything in sect. 61 unless a creditor's notice or bankruptcy inhibition has been registered. (Sect. 61 (8).)

Where the bankrupt's estate suffers loss by reason of the registrar's omission to register a creditor's notice or bankruptcy inhibition, the trustee will be entitled to indemnity as a person suffering loss by error or omission on the register. (Sect. 61 (7).)

Where a vesting order is made consequent on disclaimer by a trustee in bankruptcy of leaseholds the order is to direct registration of the person in whose favour the vesting order is made, who is to be registered accordingly without notice to any other person and without production of the land certificate. (Sect. 42 (2).)

Death Duties.—The former provisions of the Land Transfer Acts as to Death Duties, though now repealed, continue in force as regards duties payable or leviable before the Act. As to Death Duties payable or leviable after the Act, however, the old provisions are repealed and replaced by sect. 73 of the Act. As to duties becoming payable or leviable after 1925 the position will be as follows:—

Where on the death of a proprietor it appears to the registrar that a charge for Death Duties has arisen, notice of the charge is to be entered on the register (L. R. A. s. 73 (7)), after which transactions in respect of the land affected will only be registered after notice by the registrar to the Inland Revenue and cancellation of the notice. (L. R. A. s. 73 (8).) The fact that such a notice is on the register will not, however, affect purchasers by registered disposition who will take free from the Crown's claim in any event, though the person making the disposition and the funds derived therefrom will remain liable to the claim for duty. (L. R. A. s. 73 (1).) On the other hand, registered dispositions in favour of other than purchasers will only take effect subject to the Crown's claim, whether that claim be noted on the register or not. (L. R. A. s. 73 (2).)

Liability for Death Duties in respect of registered land must fall either (1) on the personal representative in whom the land has become vested, or (2) where there is no personal representative in whom the land so vests, in the registered proprietor, other than a purchaser acquiring a registered estate free from the charge for duties. (L. R. A. s. 73 (3) and (4).) But the personal representative and others in a fiduciary position are only liable to the extent that assets come to their hands available for payment or would so come but for their own default, and the liability of the personal representative or registered proprietor is without prejudice to the liability of persons beneficially interested who remain liable as heretofore. (L. R. A. s. 73 (5) (11) and (14).)

Even where the duty is payable by instalments, on a registered disposition by way of sale, exchange or charge, all duties payable in respect of the land which will be overridden by such disposition become payable forthwith with interest till paid at 4 per cent. If the result is that a larger amount becomes payable than would have been the case had payment been made by instalments the excess is to be refunded by the Inland Revenue. (L. R. A. s. 73 (6).)

For the purpose of raising money for payment, the persons made liable by the Act have all the powers which are by any statute conferred on any person for the purpose of raising the duty. (L. R. A. s. 73 (10).) Special provision is made as to payment out of capital money. (Sect. 73 (12) and (13).)

Registered land in relation to the Land Charges Act, 1925.—Writs, orders, deeds of arrangement, *lites pendentes* and other interests, which in the case of unregistered land may be protected by registration under L. C. A., are in the case of registered land to be protected by lodging a creditor's notice, a bankruptcy inhibition, or a caution against dealings with the registered land. L. R. A. s. 59 (1).) Registration of a land charge (other than a local land charge) in respect of registered land is effected only by registration under this Act of a notice, caution or other prescribed entry. (Sect. 59 (2).) Express provision is made for the lodging of a caution by a judgment creditor who has issued execution. (Sect. 59 (3).) A person acquiring title by registered disposition, apart from fraud and except as to the title of a trustee in bankruptcy, is not concerned with any pending action, writ, order, deed of arrangement, or other document, matter or claim (not being an overriding interest) which is not protected by a caution or other entry on the registers, whether he has notice thereof or not. (Sect. 59 (6).) These provisions do not, however, apply to "puisne mortgages" (*ante*, p. 346), or to an Inland Revenue charge (*ante*, p. 347) (sect. 59 (5)), since the first will fall within the provisions of the Act applicable to mortgages, and the case of death duties in respect of registered land is specially dealt with. (*Ante*, p. 367.)

Particular classes of land.—Provisions, mainly consequential on the L. P. A. and S. L. A., deal with registered land in connection with special cases, such as settled land (sects. 86—92), land held by persons in a fiduciary position (sect. 93), upon trust for sale (sects. 94 and 95), Crown and Duchy lands (sect. 96), land comprising foreshore (sect. 97), land held on charitable trusts (sect. 98), land belonging to benefices (sect. 99), small holdings (sect. 100).

Costs.—The remuneration of solicitors in respect of non-contentious business in respect of registered land is to be prescribed by order under the Solicitors' Remuneration Act, 1881, the chief Land Registrar being for this purpose an additional member of the committee. (L. R. A. s. 146.)

Other provisions.—Various other matters of comparatively minor importance appear for the first time in this Act. Amongst these are fresh powers as to rectification of the register and payment of compensation (sects. 82—84), a wider provision as to notices of restrictive covenants (sect. 50), and as to issue of a fresh land certificate (sect. 67). In future the registrar is to be known as "the chief Land Registrar." (Sect. 126 (1).) Power is given to transfer the Yorkshire Registry to the Land Registry. (Sect. 136.)

Definitions.—These, including certain fresh definitions, are to be found in sect. 3 of the Act. Notably:—

"Overriding interests" mean all the incumbrances, interests, rights and powers not entered on the register, but subject to which registered dispositions are by this Act to take effect, and in regard to land registered at the commencement of this Act include the matters which are by any enactment repealed by this Act declared not to be incumbrances. In this context reference should be made to sect. 70 (which replaces sect. 18 of the Land Transfer Act, 1875, as amended by the Land Transfer Act, 1897) specifying overriding interests which are not to be decreed to be incumbrances for the purposes of the Act so that they may affect the property, though not noticed on the register. The new Act differs from the old one in various respects, notably, the new Act omits succession and estate duty (these being now separately provided for). (*Ante*, p. 367.) A new formula is used in respect of mines and minerals and leases (which are not included if for a term not exceeding twenty-one years granted at a rent without fine whether there is an occupation under the tenancy or not). Important cases now included for the first time are rights acquired, or in course of being acquired, under the Limitation Acts, the rights of persons in actual occupation or in receipt of the rents and profits (save where enquiry is made of such persons and the rights are not disclosed), rights under local land charges unless and until registered or protected on the register in the prescribed manner.

"Minor interests" mean the interests not capable of being disposed of or created by registered dispositions, and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors unless protected as provided by this Act, and all rights and interests which are not registered or protected on the register

and are not overriding interests, and includes (a) in the case of land held upon trust for sale all interests and powers which are, under the Law of Property Act, 1925, capable of being overridden by the trustees for sale, whether or not such interests are so protected, and (b) in the case of settled land all interests and powers which are, under the Settled Land Act, 1925, and the Law of Property Act, 1925, or either of them, capable of being overridden by the tenant for life of full age or statutory owner, whether or not such interests and powers are so protected as aforesaid. (L. R. A. s. 3 (xv).)

These definitions are affrighting in appearance, but their practical result appears to be not great. (See *ante*, p. 361.)

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